

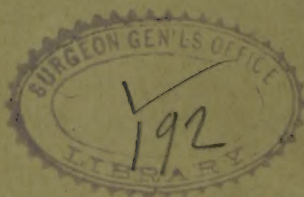
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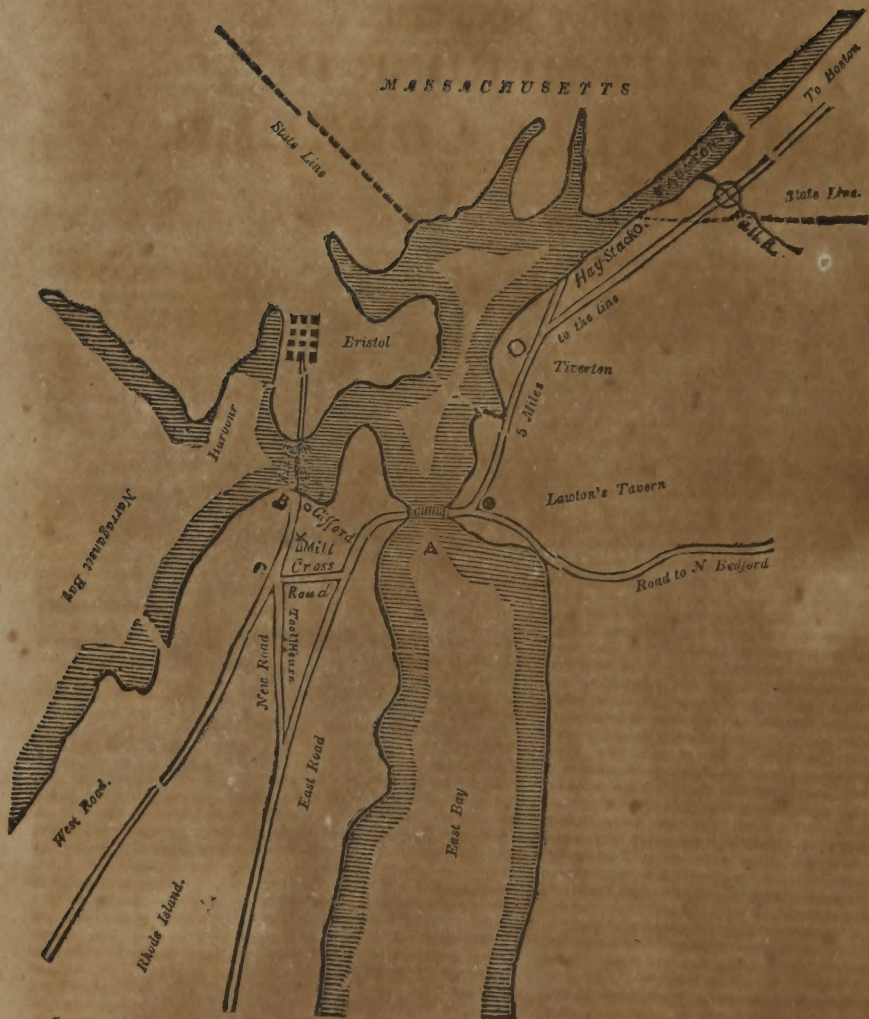
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Trials

Avery

R. Island.







REPORT
OF THE
TRIAL ✓
OF THE
REV. EPHRAIM K. AVERY,
METHODIST MINISTER,
FOR THE
MURDER
OF
SARAH MARIA CORNELL,
AT TIVERTON,
IN THE
COUNTY OF NEWPORT, RHODE ISLAND,
BEFORE THE SUPREME JUDICIAL COURT OF THAT STATE,
MAY 6th, 1833.

Containing the evidence of the numerous witnesses unabridged, and the speeches of General Albert C. Greene, Attorney General; the Hon. D. Pearce, and William R. Staples, Esq., Counsel for the Prosecution; and those of the Hon. J. Mason, Richard R. Randolph, Esq., and other Counsel for the Prisoner; together with the charge of

HIS HONOR CHIEF JUSTICE EDDY,
IN FULL, AS TAKEN IN SHORT HAND, BY

A LAW REPORTER OF NEW-YORK.

— " Murder,
" Though it hath no tongue, will speak
" As with a most miraculous organ."

New-York,

PUBLISHED BY WILLIAM STODART .6 CORTLANDT-ST.

TRIAL

OF THE

Rev. EPHRAIM K. AVERY,

METHODIST MINISTER,

FOR THE MURDER OF

SARAH MARIA CORNELL.

FIRST DAY.

Shortly after the Judges and counsel had taken their seats, the prisoner was brought in; he bowed to each, and sat at the counsel table with perfect self possession, which was not however characterised by any unbecoming confidence of demeanor, but appeared rather the result of great mental firmness. In point of health, he seems to have suffered severely since his arraignment in March last; his face is greatly attenuated, and its complexion might almost be described as cadaverous.

The Counsel for the State in this prosecution, are General Albert C. Green, Attorney General; the Hon. J. D. Pearce of Newport, and William R. Staples, Esq. of Providence. Those retained for the prisoner, are Richd K. Randolph, Esq. of Newport; the Hon. Jeremiah Mason, of Boston; J. Turner, Esq., Henry Y. Cranston, Esq. both of Newport; and — Blake, Esq. of Bristol.

Attorney-General: If it please the court, I move that the trial of the prisoner proceed; or, if this be now impracticable, that a time be assigned for it.

Chief Justice: As far as we are concerned, no objection; and if there is none on the part of the prisoner, the Clerk can proceed immediately to call the jury.

Mr. Randolph, (for the prisoner.)

I feel somewhat embarrassed at the difficulty which I anticipate will be found in the formation of a jury for the trial of this case, and therefore submit it to the court, whether, in this particular instance, it would not be proper to form a panel at large; and from parts of the county distant from each other, to obviate, if possible, the difficulty which may arise.

Chief Justice—It may be expedient to enlarge the present panel: but we can give no order as to forming it from particular towns or places, for this must be left to the discretion of the Sheriff.

A venire was accordingly issued for the addition of forty-eight jurors to the present panel of fifteen; and of this aggregate the prisoner will be entitled to twenty peremptory challenges.

SECOND DAY.

Newport, Tuesday, May 7.

The Judges having taken their seats at 9 o'clock, the Attorney General moved that the prisoner be brought into Court.—He was brought in, and he took his seat as before at the table near his Counsel. He appeared feverish and somewhat less composed than yesterday. He was dressed in a dark frock coat, black vest and pantaloons, and an over coat of nearly the same color as the under one: he wore spectacles of a purple hue.

Clerk of Court—Ephraim K. Avery, held up your hand.

He held it up for a short time, and then placed it in the breast of his coat, laying his left upon the back of a chair. The fearful indictment was then read. The 1st Count charged him with having, at Tiverton, in the county of Newport, fastened a cord round the neck of Sarah Maria Cornell, and therewith choked and strangled her; the 2d, that he therewith strangled her, and hung her to a stake; and the 3d, that he struck and beat her upon the lower part of the belly, in and upon the left side, and upon the back; inflicting mortal strokes and bruises; and that he placed the cord aforesaid round her neck, and therewith did violently constrict, compress and squeeze her neck until she died.

As on his first arraignment, he preserved unruffled composure, unless indeed his actively and incessantly chewing some small substance, apparently white paper, may be considered an involuntary mechanical indication of a strongly condensed mental agony which his firmness would not allow to be less equivocally expressed. His deep blue eyes intensely fixed on the Clerk of the Court during the whole time the indictment was being read, seemed to gather a yet more vivid intensity whenever a detail particularly horrible caught his ear. Yet his appearance, to a superficial observer, is calculated to excite respect, and in his manner there is nothing which the most prejudiced could charge with impropriety.

Clerk of the Court—How say you prisoner, Guilty? or not Guilty?

Prisoner—Not Guilty Sir! (firmly, and with an emphatic motion of the head.)

Clerk—How will you be tried?

Prisoner—By God and my country! (with rather a devotional intonation.)

Clerk—God send you a good deliverance.

He was then directed in the usual form to challenge the Jurors as they should come to be sworn.

Attorney General—The course hitherto adopted in this Court, on each capital trial has been to put each juror on his *voire dire*. The first juror called was Abraham Barker—to whom the Attorney General put the three questions following, as he did to each of the others:—Are you related either to the prisoner or to the deceased? (naming them respectively.) 2d, Have you any conscientious scruples to finding a man guilty of a crime which the law punishes with death. 3d, Have you formed or expressed any opinion of the guilt or innocence of the prisoner?

The application of these questions gave rise to discussions between the opposing counsel, which were renewed throughout the day, and appeared interminable. The Hon. Jeremiah Mason, & Mr. Randolph, of counsel for the prisoner, contended by arguments and authorities that the last question should distinctly elicit whether the opinion which the juror may have formed or expressed was *against* the prisoner, instead of the general answer that he had formed or expressed an opinion.—They said that unless they knew whether that opinion were *against* the prisoner they could not know when to challenge a juror. The Court stated that the rule of practice established in this State, was, that when a juror had formed an opinion, either for or against a prisoner, he was equally disqualified for the impartial exercise of his solemn duty, and was there-

fore to be "challenged for the cause." The Attorney General defended this principle with great clearness; but the Hon. J. Mason, having cited from the Massachusetts Reports the use of the separate interrogatory "have you formed any bias against the prisoner," the Court deemed it an authority, and expressed their inclination to adopt, in the present peculiar case, the practice of that State. But the Attorney General, having felt himself authorised by this practice, to pursue the further question "would that bias incapacitate you to render an impartial verdict after hearing the testimony, the counsel for the prisoner objected; and the discussion which ensued, indicating no tendency to a conclusion before it should become merged in the business of the Supreme Tribunal of the human race, the Court took a (welcome) recess for the dinner hour,

and stated that they would rule the question at 3 o'clock, P.M. Only three jurors were sworn this forenoon, out of 48 who were either challenged for the cause or peremptorily by the prisoner.

At 3 o'clock, the Judges resumed their seats, and the Court ruled that they would adhere to the established practice of this state, viz: that "if a juror declared he had formed or expressed an opinion of the guilt or innocence of a prisoner upon a capital charge, he should be deemed disqualified."

Upon this principle, the formation of the jury was recommenced, and at the adjournment of the Court, three more jurors had been sworn: making half the number required.

The panel, from the last venire, having been exhausted, a new one was issued for 60 other jurors.

THIRD DAY.

Wednesday, May 8.

The Court did not sit until 3, P.M. to allow time for the arrival of jurors. The remainder of the day was occupied as the day preceding, but with the gratifying result that six more jurors had been sworn: thus making the required number.—The Court considering the hour at which this desideratum was obtained too late to open the cause with convenience, adjourned until the morning.

The following are the names of the Jury; they are all residents of Newport, with the exception of two:—

Eleazer Trevett, Foreman; Joseph Martin, Charles Lawton, George Tilley, Horatio Taylor, Noah Barker, James Easton, William Reed, Gideon Peckam, Milton Hall, Edwin Wilbor, John Sherman.

The whole number of jurors challenged on this trial by the Court and the prisoner was 108; by the prisoner alone, nine.

FOURTH DAY.

Thursday, May 9.

The Judges took their seats at 9 o'clock, pursuant to adjournment, and the prisoner having been brought in.

The Hon. Dutee J. Pearce, opened the cause for the prosecution.

May it please the Court, gentlemen of the jury; the indictment which you have heard read states the crime with which the prisoner before you is charged; and the time, place and manner of its commission. In each Count it is set forth substantively, but so variously, as to embrace all the probable modes of its perpetration; and if we prove him guilty of the crime as described in either, we shall do all that the laws of our state require to hold him forth the just object of the punishment which they impose—[the counts summarily recapitulated]—That punishment is death, according to our statutes (page 339.) It may here be necessary to inquire what legally constitutes the crime. In the 4th of Blackstone p. 95, four essential attributes are described—1st. It must be committed by a person of sound mind—2d. It must be unlawful; i. e. without warrant or sanction—3d. It must be committed under the King's peace, (or the peace of the State,) and 4th, the killing must be committed with malice aforethought; which last is a necessary criterion to distinguish it from other homicide. There are many cases in which malice is not proved where the law implies it; but in the case before you there are few circumstances which can class it with these. In ordinary cases the chief difficulty is to ascertain whether the offence amounts to murder or manslaughter; whether the act was voluntary or involuntary; excusable, or devoid of a mitigating incident; but in the present case, if it should appear that the prisoner killed the deceased by a wilful act, it cannot be pretended that he did so under the influence of strong and sudden passion or in the absence of his rational powers. It must have been a wily deliberate murder, in which every feeling that is cruel and mean, disgusting and relentless must have united in horrible energy.

I will now give you an outline of the leading facts of the case, without entering minutely into the details of the evidence which we mean to produce, and which, if we do produce will establish in your minds a clear conviction of the prisoner's guilt.

[The learned counsel here accordingly gave an interesting narrative of the principal facts of the case as they bear against the prisoner, but as all these appear in our full report of the evidence, and are yet more forcibly arranged in the concluding summaries we omit this part of the opening.]

I am aware that this is a case in which it is said no positive proof can be obtained. But some of the most strongly established cases of murder, are those in which no positive proof could be adduced. When a murderer has resolved upon his deed, he does not call out his neighbors to witness it; his intention lurks in the dark chambers of his heart, until it conducts him to the secluded scene of its action.

The formation of this jury, perhaps unprecedented for its difficulty in this state and in many others, was distinguished in its progress by some remarkable peculiarities. One is, that of the whole number of jurors challenged but one intimated that he had formed an opinion favorable to the accused. Except those few disqualified by conscientious scruples against returning a verdict which would ensure the punishment of death, nearly the whole number called confessed to have a bias against him. Another singular fact is, that he peremptorily challenged no juror who had not explicitly declared himself strictly neutral; and many of the jurors whom he rejected, expressed their neutrality much less equivocally than several of those to whom he made no objection. The rule or motive of choice between these neutral jurors, by which, under the direction of his counsel, he was guided, appeared to be the subject of much speculative opinion.

There are few cases of guilt the most clearly proved, in which the mere possibility of innocence is preceded, and whenever this possibility is attended by circumstances which create a doubt of a prisoner's guilt, he is entitled to its utmost benefit. The case which we lay before you, however, is one in which even perjury is precluded; the testimony of one witness will sustain that of another in a circumstantial chain, link by link; and it will be, in its moral demonstration, much stronger than though it rested upon the testimony of two persons who saw him commit the deed. It is not a case in which design, conspiracy, and perjury could unite their three fold cord to bind their victim to the public altar; but it is one in which the lamp of public vigilance has traced the steps of guilt through its most subtle wanderings, and has detected in the very erasures which it has thrown behind it to conceal them still more indubitable clues to its retreat. True its case will rest upon circumstantial evidence; but this kind of evidence is allowed to prevail to the conviction of offenders, because it is in its own nature capable of producing the highest degree of moral certainty in its application. [The learned Counsel then read from Starkie on Evidence, vol. I. p. 477-8-9.]

My views of this kind of testimony are warranted, and thus have the sanction of the highest authority upon the subject.

Gentlemen, I need not for a moment impress your minds with a deeper consideration of the importance of this trial than you at present feel. To the Government, and to the character of the State in which we live it is of an importance which will endure beyond the present day. When I say that it is a trial which has created an excitement unprecedented in the history of our State, and extending with scarcely less intensity to other States around us, its importance magnifies beyond cases of ordinary solemnity. The causes of this excitement are well known; for it is enough to say of this trial that religion has thrown her ardent arms around it, and that anti-religion has sneered at her infatuation. The prisoner is a minister of the Gospel in one of the most numerous and respectable religious communities in the Union; a denomination which has its 10,000 licensed preachers, its 500,000 church members, and its 3,000,000 hearers; a denomination which has advanced in comparison to others not less rapidly than our country itself has outstripped the nations of the world. What wonder, then, that these millions should breathe anxiously to know whether a minister who stood high among them be guilty of the crime of murder? Sectarian jealousy, too, may have mingled its less laudable curiosity, and anti-religion have risen for its privilege to scorn. And the excitement may not have been lessened by the circumstance that the victim of this foul and revolting murder, was a poor factory girl; one of the 7000 in this State alone, whose unceasing industry draws wealth and all the benefits of their manufacture from its 130 mills, for the general advantage of its citizens. And over the rights and lives of these poor girls the law holds its protecting shield, not less proudly than over those whose vocations are not of this world.

Gentlemen, you stand in a situation scarcely less awful for its responsibility than that of the prisoner for its consequences. It is your dignified and solemn duty to stand aloof from all and each of these sources of excitement and bias, whether they would incline your minds to the one side or to the other. Hear as though you had never heard. To the accuracy of your judgments and the integrity of your hearts, the sacred cause of justice, and the honor of our State are entrusted; decide according to the testimony and to the law.

John Durfee, sworn for the prosecution. I reside at Tiverton, and did so on the 21st December last. My house is half a mile from the bridge at Fall River, near the boundary line of Rhode Island and Massachusetts. On the morning of the 21st of December, I took my team to go from home to the river, and passing through a lot about 60 rods from my house, when I arrived within ten yards of the haystack, I discovered the body of a female hanging on a stake. This body was afterwards identified as the body of Sarah Maria Cornell. I immediately went to her and found she was dead. Her hair was over her face in such a manner that I parted it away to ascertain whether she was dead or alive.

Attorney-General.—Be good enough to say if there was anything particular in the state of her clothes, and if so, what it was.

Witness.—Her outside dress was a cloak, hooked together nearly the whole length, except at one hook a little below the chest. She had on a calash bonnet, and her shoes were off lying together; her feet were as close together as if they had been tied, and her toes on the ground; her knees bent forward nearly to the ground. [Witness descended from the stand and showed the distance to be 8 or 9 inches, by placing himself in a similar position.] Her clothes were smoothed back under her knees and legs as far as they could reach. Her head was lower than the top of the stake; the distance between the place where the line was fastened round the stake and the top of it was 6 inches. The calash on the right side was so bent back that her right cheek came against the stake. I called to two persons who were near, in sight, and they came with a third. Their names are Richard Durfee, William Allen, and Benjamin Negus, who got into the stack yard and noticed how she hung; after looking at her a minute or two, I attempted to take her from the stake by lifting her up with one arm and removing the line from the stake with the other, but finding I could not well do it, Richard Durfee advised me to cut her down, and lent me his knife. I did so, laid her on the ground, and went away immediately after the coroner. I cut the string about half an inch from where it drew together on the stake, and something more than 4 inches from the knot on her neck. Her shoes were lying about 18 inches from her, and one of them had mud on it; her handkerchief lay about the same distance. Did not observe that she had any bag with her; but she had her gloves on. The coroner came with me to my house and thence to the stack. The body was shortly afterwards removed to my house in a horse wagon; she was first laid on a blanket under which was some hay. She was carried slow and the road was smooth; she partly lay on her left side when taken from the stake, for her legs were bent so that she could not lay on her back, and she was laid in this way on the wagon. The coroner had summoned a jury, and when she was removed to my house they preceded to their duty. I left them and went after her trunk to Mrs. Hathaway's; she delivered it to me, and a bandbox, saying the key of the trunk was probably in the girl's pocket, as she generally carried it with her. The key was afterwards given to me at my house by a woman named Ruth Cook. It was about two hours and a half after I discovered the body that I went to Mrs. Hathaway's, for I discovered the body at 9 o'clock, and got into my house, from her's, before 12. I went for the trunk, because the woman said she might have things there necessary to lay her out, and because I understood she had letters in it which might enable us to find her friends. I opened the bandbox at my house, it was carried thither as I received it. I took from it several letters; I believe I can identify them. [Letters produced; one of them was written on yellow paper, one on pink, and two on white; and the witness identified them severally as they were handed to him.] Those which are addressed to her were opened; the one written by her addressed to the Rev. Mr. Bidwell, was sealed. Her band box contained clothing of different kinds; at the bottom there was a pencil, and beside it a piece of paper about four inches square; I could identify it by its shape and general appearance, which is dirty, but I did not examine it. [Paper produced.] I believe this is the same; it was shewn to me the next day by sister Susannah Borden when I read it. There are no intervening objects to obstruct the view of the hay-stack from my house, from two windows of which it could be seen. I did not examine the kind of knot which fastened the string at her neck; the one on the stake was a slip-knot taken in a bight as in any other cord;

when cut off four ends hung down from the stake; it was a small cord considerably less than the smallest goose-quill, and was so deeply embedded in the neck as to be nearly out of sight; it went round the neck horizontally, and I could not perceive that it was higher on one side than on the other. The jury which met on Friday, not having agreed they met on Saturday and having found a verdict, the body was buried about one o'clock, P.M. On Monday the coroner, in consequence of the letters found in her trunk, and the paper found in the band-box, ordered the body to be taken up for another inquest; it was removed to the barn near the burying ground, and examined by Dr. Wilbur and Dr. Hooper; I did not myself examine it particularly; the jury did, and it was buried again the same day. It was again disinterred on the 25th January, I believe, and examined by the same medical men.

Attorney General.—Where were you about sunset on Thursday, the 20th December last, the day before you saw the body?

Witness.—I was near my house driving my cattle to fodder them for the evening, a few minutes before sunset; and saw a man about 20 rods from where I found the body, and about 80 rods from where I stood; he was standing still, facing westward; I could not see his face, but he was a tall man, wearing a surtout coat of a dark color, and a hat with a broader brim and higher crown than common. My attention was called in that direction by hearing a rock blow up, and this explosion was succeeded by another more loud; the blasts occurred in the distance between the man and village of Fall River towards the north, the stack yard would command a view of the village.

Cross-examined by Mr. Randolph.—I don't know who first recognized the body to be that of Sarah M. Cornell; but I was first told who it was by the Rev. Mr. Bidwell, the minister of Fall River. I did not unhook the cloak when I lowered down the body, though one hook may have opened in lowering, for it appeared more open when she was laying on the ground than when hanging. I will not swear two hooks were not unhooked before she was taken down. Mr. Hicks, the coroner, came to hold the second inquest on Monday, in consequence of my showing or telling him on Sunday the contents of the small slip of paper which was found in the bandbox; it was the same jury as before except two members, who not being Freeholders, were withdrawn for others. When I cut the body down, I left the part of the string which was fastened to the stake hanging there, but it was removed the next day when I went to look for it; I am certain there were four ends hanging from the stake when I left it there.

By the Attorney General.—I am not certain there was more than one hook of the cloak open at all. It was from Dr. Wilbur, I heard she had letters in her trunk, for he said he had seen one which she had. I know the piece of paper externally, by its "countenance," from its being rather dirty.

By Mr. Mason.—I never said I knew it by the pencil writing inside. All I said about a pencil was that I saw one near it, in the bottom of the box.

2. Williams Durfee.—I reside at Tiverton and did so on the 20th Dec. last. I was called to be one of the jurors on the body of Sarah M. Cornell, after it was laid on bed at John Durfee's; I examined the neck to see if it was broken, but could not discover that it was. I could not at first perceive any cord, it was so deep in the neck, but on turning to one side I saw a little knot, and string, near the right ear, but not under it. It was what is called by farmers, two hitches; but we, who have been to sea, call it a "clove hitch." We sometimes use it in killing calves, passing the cord twice round the neck, taking the hitches, and then one (person) pulling one way and the other another. Farmers sometimes call it a "cow hitch." It must be drawn horizontally, and will not draw if pulled in any other way. It was exactly round her neck, as near to one ear as to the other; I tried to get hold of it with my finger nails, but could not, and called Job Cook to help me get it out, for I was afraid to use a knife lest I should cut the skin; however we were compelled to cut the cord, and when we had picked out the ends, we gradually passed it round the neck till it was unwound; the calash strings were under it. It was a kind of string which sailors call marline, though some call it houring (string produced.) This is like the string, but rather more open at the ends than it was then; this appears to be the whole of it except two or three inches which I cut off and gave away. [At the request of the Attorney General, witness here made the clove hitch upon his thumb, showing how it acted.] Every body knows that a clove hitch must be drawn horizontally, with both hands, or you will never get it tighter where the knot is.

Foreman of the Jury.—I want to ask the witness for my satisfaction and that of the jury, whether that knot will not draw at all in a perpendicular direction, when the ends are brought together? [Witness again took the string and showed

the impossibility.] So you see, it will not draw at all, fixed that way.

Cross-examined—What I stated at the Bristol examination was, that there might be three or four inches of the string hanging from her neck when she was cut down. I don't think it was five inches, but I will not swear it was not six; I speak to the best of my recollection both now and then. [During the examination of this witness, the prisoner placed a piece of red tape in various forms on his hands, with an air of abstraction.] I measured the distance of the cord around her neck from the ears, and it was about an inch and a half from each. I speak to the best of my recollection, and if you want to get more from me it will not be evidence.

3. **Seth Darling**—Described the position and dress of the body, state of the cord around the neck and stake, and other circumstances, precisely like the previous witnesses, adding—her hair was a good deal "frowzelled" and dishevelled over her face, and her calash was bent back on the left side: both hands were under her cloak, the right raised up to her breast, and the left down by her side. The boggy grass around did not appear to have been trodden on, and there was no appearance of a struggle either in the stack yard or near it. I acted as Post Master, at Fall River, on Monday, the 19th of November last; I made up the mail for Bristol that day, the only day in that month I did make it up; it contained but one letter, and this was directed to the Rev. Mr. Avery. I recollect this, and the entry which I made in the office book and in the way bill at the time; I can produce a copy of the entries which I then made; I took the copy in the month of March, when this trial was expected to come on. [Mr. Mason here objected to the admission of this copy as evidence, saying the witness must either depose to the fact from memory, or from the original entry. The Attorney General replied that as the original was within his reach, he would for the present chance the correctness of witness's memory.] Another letter was put into the box with this one directed to Mr. Grindall Rawson, South Woodstock, [brother-in-law of the deceased] the wafer of which was wet when taken out of the box. [Letter produced, marked Fall River, Nov. 19th, fig. 10, which witness identified by his own mark on it.] I was standing about two feet from the box, which I had cleaned out about half a minute before, when I heard two letters dropped in; I did not see the person who dropped them in, but I took them out immediately, and they were those I have mentioned.

Cross-examined—In a most protracted cross-examination of this witness, respecting his being a member of the Committee of Vigilance, at Fall River, and his means of recollecting the above letters, nothing of importance was elicited except the following:—"It was the custom of the office to mark the letters with red ink, but in acting for the Post Master that day, who was sick, I marked the letters with black ink; one reason also of the name of Avery being impressed upon my mind was that it occurred to me at the time he was the methodist minister at Bristol, although I did not know him personally."—Recess of Court till 3, P.M.

4. **Lemuel Briggs**—I have been the Postmaster at Bristol for ten years; I recollect the entry of a letter from Fall River on the 19th November, addressed to the Rev. Mr. Avery; has some recollection of the letter independently of the entry, but could not swear positively without the books and way bill, which he had neglected to bring. [And Mr. Mason contending that testimony founded on memory refreshed by written documents, could not be evidence unless the original documents were produced to corroborate it, the Attorney General moved the Court for a subpoena Ducis Tecum to obtain them.]

5. **Elihu Hicks**, (Coroner of Tiverton,) deposed to the situation, &c. of the body when found, the proceedings of the inquest, and his custody of the letters immediately after they were found in her trunk, &c.

Cross-examined a long time, and with amazing difficulty, being an old man of irritable temperament and rather deaf.—"I don't know to a certainty whether I swore the jury or not; I charged them at the stake; I have held half a dozen inquests before without swearing a jury, and one on which you (Mr. Randolph) was concerned—that of the colored woman; the verdict I believe was *suicide*, but I don't think it was signed by all the jurors; three or four signed it, but not more than four; I don't know where that verdict is, I left it on the table and it has been lost; I will go home and look for it, (reluctantly) but if I can't find it I won't bring it. [We have been informed this verdict was written in the following words: "The deceased, S. M. Cornell, died by committing suicide upon herself, with the assistance of a married man." The second verdict I believe is in Court, except the testimony of Dr. Wilbor, which he borrowed of me, and which has been published in the newspapers. Witness put on his hat, and asked when he should be wanted again.]

6. **Dr. Foster Hooper**—A practice medicine at Fall River, where I first went after closing my studies, and where I have resided five years. I did not see the body of Sarah M. Cornell before it had been interred, but on the Monday following her death, in John Durfee's barn. There was a deep indentation all round the neck, from three-eighths to half an inch in depth; it was nearly horizontal, and on carrying the head back it became quite so; it was of a reddish black color, dry, and presenting the appearance of parchment; on the right side of the indentation, the cuticle or scarf skin lay in fine shrivelled plates, as though the cord had been drawn very swiftly, and they had been pinched between its strands. The indentation crossed the thyroid cartilage and the spinous process of the second vertebra of the neck, and was an inch and an eighth below each ear. On the right cheek and temple there were irregular indentations, perfectly colorless, as though occasioned by pressure against some hard substance after circulation had ceased. The stomach appeared perfectly healthy, but the lungs were engorged with black venous blood; on the knees were several scratches and abrasions which had drawn blood; they were also dirty, and stained green as with the juice of grass. There were a few scratches on the left leg below the knee, and at two places skin was knocked off about the size of a four penny piece (6¢ cents.) The right side of the abdomen was of a lived hue, but the lividity was so diffused that it appeared more like incipient putrefaction than the discoloration of a bruise; on the left side however, just above the hip, there was a considerable contusion which could not be mistaken. We discovered a *fetus*, which at first appeared to be about half grown, but it required a minute inspection to ascertain its sex, which proved to be female, and was returned to the body. We did not at this time examine the lowest parts of the abdomen, for some of the jury objected to the removal of the cloth with which they were covered. The countenance of the deceased was not much distorted; the eyes were closed, and the face was pale, which is not often the case in bodies which have been hung. The tip of the tongue was a little between the teeth. At the second examination on the 26th January we found the body in nearly as good a state of preservation as at first, and there was no more smell, but the face apparently in places where the frost had bitten it was covered with a white mould, and underneath by making an incision we found the substance which resembles spermaceti. Dr. Wilbor and myself directed our attention to certain parts for the purpose of ascertaining whether any violence had been applied to these particularly. On removing the cloth we perceived the discoloration to be much lower than we had before observed it. The lower abdominal muscles had evidently been bruised, for they were mixed with extravasated blood; and on dissecting the superficial muscles of the back, on each side of the spine, just above its junction with the pelvis we found the same appearances, but a little higher on the left side than the other, and each bruise was about two inches over. The bruises in front appeared to extend from one grime to the other. We then carefully dissected out the part referred to; the cavity of the uterus appeared as usual, but its orifice was nearly black and open, and the upper part of the vagina around it was dark livid.—These appearances induced us to apply the test of washing, to ascertain whether they were the effect of force from a hard substance; we accordingly cut the uterus into small sections, and found that its dark and livid portions would wash white, whilst the parts which bore a healthy appearance would not. We applied this established test to some pieces of the large and small intestines, but these not having been bruised, would not wash white. I am unable to say whether these peculiar discolorations are ordinarily the result of death by strangulation, but I should think not. In consequence of rumors that the right arm of the disease was broken, we examined it, and found it was not. We measured and weighed the fetus as accurately as possible, and found its length to be 8 inches, and its weight 5 ounces. The umbilical cord attached to it was an inch and a half in length. I am of opinion that although some of the discolorations were partly occasioned by incipient putrefaction, there was one bruise, at least, which could not be doubted.—I am of opinion that the cord around the neck was drawn tight enough to have stopped the circulation not only in the veins but in the carotid arteries. We passed a string round the neck in the indentation, and then on the outside of it, and the difference of circumference if I correctly remember, was an inch and a half; it would probably have been more had the head been placed back when we measured, for the diameter of that part of the neck is less when the head is in that position.

Cross-examined.—The engorged state of the lungs might have been the same whether she died of strangulation or of hanging. The blood might descend to the abdomen and extremities by gravitation and thus discolor those parts, but this could occur only when the vessels had become too weak to suspend it by capillary action; the cellular membrane would be-

some dark but not the muscles. Some of the muscles were covered with extravasated blood, which we removed with a forceps, and these being bruised would wash white. I never delivered a lecture in Swansea in which Avery was mentioned. He might have been talked of in a private conversation after my lecture, and this reported as a part of it. I am convinced that violence was exercised upon Sarah M. Cornell before her death. [In order to determine at what stage of pregnancy this woman died, the witness was cross-examined her nearly an hour and a half upon several of the most delicate branches of medical science, and in which it was evident the examining counsel had made curiously minute research; but unless we had time to clothe this testimony in more highly technical language than it is expressed in our notes, it would be utterly unfit for general publication. [Notwithstanding these authorities for determining the age of a fetus by its length and weight; I am convinced that fetuses of the same age differ in both, as often as children do at their birth. I do not think the woman was so far gone as I at first supposed.]

7. *Dr. Thomas Wilbur.*—A member of the Society of Friends, and a physician of great experience, who had assisted in the examination of the body, described its situation and appearances precisely like the last witness, and expressed the same opinions concerning them. He proceeded to say—"I had seen the deceased several times before her death, for she had consulted me about her health, and wished to know whether she was in a state of pregnancy; I could not form a decided opinion

the first visit, but afterwards told her she was undoubtedly so. This was seven or eight weeks prior to her death.

Attorney General.—If it please the Court, I propose to ask the witness whether the deceased made any communication to him in reference to the author of her situation, and what the conversation was that passed between them. I did not ask the witness this question, because I knew the learned counsel opposite intended to object to it; but I propose that the whole conversation be stated to prove the facts: 1st. That she did make known her situation, and 2d, that she did name a certain individual as the cause of her situation. These facts I propose to prove because I understand one of the principal grounds of defence in this cause is, that the deceased committed suicide; and these facts, if proved, will show that the usual motive to suicide under similar circumstances, namely the fear of disclosure, could not here have impelled her, for they will show that she had already disclosed both her situation and its author.

Mr. Randolph.—The real object, if it please the Court, with which the Att'y Gen'l proposes to get in this conversation, is to implicate my client as being the father of this woman's child, and thus to prove a very important part of the case by second-hand declarations of her own; but by no rule of law can such testimony be admitted; her declarations have not the authority of dying testimony, and were not made under oath. The fact that she applied for medical aid may be evidence; but her declarations are not, and they must die with her. The Court adjourned till the morning.

FIFTH DAY.

Friday, May 10.

The Court met at 8 o'clock, A. M.

The Attorney General said he should not delay the trial at present by continuing to discuss the question of evidence raised last evening, but should proceed with the testimony.

Dr. Thomas Wilbur, (cross-examined.)—When I first saw the body, the day after her death, the tightness of the string round her neck, her cloak being hooked throughout, and her arms and hands under it with gloves on, were circumstances which looked like homicide, and caused a doubt on my mind which I could not dispose of. After a multitude of unimportant questions, Mr. Randolph said—on your last examination of the body was there any thing apparent from which you would swear in a case of life and death, that a hard instrument had been introduced for the purpose of producing abortion? Witness—There is a difference in feeling certain of a thing and being able to swear to it; but to the best of my knowledge and belief the discoloration which was found on the parts, could not have arisen from any other cause." A pretty warm debate ensued between the counsel, towards the conclusion of Dr. Wilbur's testimony, on the subject of deposition which he gave before the coroner, and which he had afterwards enlarged, and permitted to be published in a Providence paper in March last. The witness expressed his regret that it should have been published at that time, as it contained all the statements which the deceased had made to him with respect to Avery; but at the time witness gave it to the Editor, he did not know that Avery would return to this section of the country. Mr. Mason concluded a discussion more than usually exciting by an attack upon newspapers in general, which we will not report, lest it should utterly exterminate a class of publications to which some persons have been largely indebted for their reputation.

Lemuel Briggs, Postmaster at Bristol, (1st witness) recalled.—On the 13th November one letter was received from Fall River, postage 6 cents; there are several other charges entered against Mr. Avery that month, and my son took a receipted bill of them to him, which he paid; there were two charges against him of 6 cents each, one on the 12th and the other on the 19th of November; the letter of the 12th was the only one in the mail from Fall River on that day. I have no recollection that these letters were delivered to Avery himself, though he keeps a box at the office. I never saw a letter in the office directed to *Betsy Hills*, (—) and I do not know any person of that name.

Cross-examined.—I have no recollection of the dates on which these letters were received except from the records of the office, but I believe it from them; the letters are always entered, and I know of no deviation from the rule. The way-bills are sent to Washington quarterly, and there kept. The entry on the 12th of November is in my handwriting; that on the 19th is in my son's; the letter charged to Avery could not have come more than 30 miles.

8. *William Allen*, corroborated the testimony of the first two witnesses, as it respects the position and peculiarities of the body when found.

9. *Benjamin Manchester*, also deposed to the same facts, adding,—"From the stackyard, I went to my labor, and about

18 or 20 rods from where the body lay I found a piece of a woman's comb, which has since been known to be S. M. Cornell's; the one produced is the same. I work on the land belonging to Andrew Robinson, about 50 rods N. W. of the stack yard; and on the 20th December last, about sun-set, Abner Davis and I started for the west end of the meadow towards the shore, leaving a considerable charge of powder in a rock on which we had been working to blast it. Near the west end of the meadow we saw a man sitting on the wall, with the skirts of his coat held up in his hands; he jumped down, and as he was crossing where we had passed, quite in a direction which would expose him to danger from the explosion, I told Davis to sing out to him, and just as he halted the powder took fire. He canted his head a little to avoid the falling stones, and if he had gone much further they would have fallen very near to him. He was dressed in a dark brown stout coat, buttoned up snugly, and wide a brim'd black hat. His height was rather above the common standard, but I had no opportunity to see his features; he first went square across the meadow, and then halted east. I have since seen Ephraim K. Avery, and the dress, stature and appearance of the man in the meadow resembled in every particular those of the prisoner. There was a cart standing in the lot where we worked, about 100 rods from the stack yard, into which we had put some bags we use to sit upon in drilling with some of our tools, and these bags were sewn up with such cord as that round the stake.

Cross-examined.—There is no wall between the stack and the place where I found the comb; the ground is rough, and rather descending towards the stack. There are no apple trees within 50 rods of the spot where I found the comb, but now and then some rose-bushes and briars.

10. *Pendops Burden*, (an aged lady.)—I assisted in laying out the body of Sarah M. Cornell, the day she was found dead, and saw the whole of her person; there were very bad bruises down her back, and as we turned her over we saw the prints of some one's fingers just above the hips. [The Attorney General here went to the witness and she placed her hands on his person in the same form as the marks appeared on the body.] The marks just layed (fitted) to my fingers as I spread them on you now; the marks of the thumb on the lower part of the belly, and of the fingers opposite on the loins, just behind, were on both sides, but those on the right side were the plainest. They were very bad marks, and were "both above and below, those limbs below," (placing her hands upon her thighs.) Her right arm was raised up thus, (to the breast) and the hand twisted round so, (the palm turned outward from the person) and was very stiff. My sister, who is older than I, put her fingers on the marks upon her belly, and they would nearly "fay." Her secret appeared much bruised, and there was a little blood upon her garment. One of her knees was very green, the other not so much so, and the stain of the grass would scarcely wash out; the marks on her back so took my attention, that I did not examine the smaller ones. The cord round the neck had been removed before we came, but the mark was very deep.

Cross-examined.—The knees were so bent, that we used warm water to get them down; I first formed an opinion that she had been violated, but I am not forced to tell what my

thoughts are. (Mr. Randolph here made some particular inquiries, and the venerable old lady exclaimed I never heard no such questions asked by no person," and would not reply.

11. *Ruth Burden*.—I assisted the last witness in laying out the body, and the marks were such as she described them; those of the thumbs on the lower part of the belly must have been made on both sides when the grasp pressed thus, [describing the supposed position of the hands which made the marks, by placing her own upon the person of a gentleman who was requested to stand near her for the purpose] with the two thumbs pointing to each other upon the belly above the groin. There were marks lower down, * * * very dark. Her under garments were stained with a little blood, and there was also a quantity another kind of substance (foeces) adhering to them; the legs were scratched, and the knees stained green.—Witness not cross-examined.

12. *Dorcas Ford*.—(The feelings of this respectable lady nearly overpowered her.)—I assisted in preparing the body for interment; there were marks apparently made thus [describing them on the person of her husband], and others which have been described; there were two just below the shoulder blades, of a yellowish brown color, and others on the loins which indicated greater violence.—Mrs. ———— lifted up her hands, and said "Oh! what has been done?" and I replied, rash violence! There was froth tinged with blood, which had proceeded from the mouth and nose.

Cross-examined.—I did not say at the Bristol examination, that the body bore marks of a violent intercourse; I said she had been "dreadfully bruised." I did not say there had been an attempt at abortion, but you can judge of that yourselves.—The witness was questioned a long time on these two points, but she would return no other answer, than that she had said "the deceased had been dreadfully abused," and her life bruised from her.

13. *Susannah Burden*, deposed to having seen most of the marks before described, and to those of faces on the under clothing.—"I have seen this paper (produced) before; it was taken from Maria Cornell's bandbox by John Durfee's wife, and I carried it down to the Rev. Mr. Fowler's, our pastor; I know it by the marks on it; and this letter (produced) was taken from her trunk at the same time, to find out where to direct to her friends.

Cross-examined.—The paper was found on Saturday afternoon, about 4 o'clock; it was found about half-way down the band-box, among her clothes, and I saw a pencil beside it.

14. *Thomas Hart*, identified the pieces of a comb produced, which had been at some time repaired with a slip of brass, as those which he had found in the lot, 23 rods from the stake.

15. *Aber Davis*.—On the 20th December, I was with Benjamin Manchester (No. 9) blasting rocks about half a mile from the village of Fall River; we had blown a rock in which a seam had been left, which we concluded to blast again that evening; we charged it with about a pound of powder, and having applied the fire, we started to run down westward; whilst I was running, I saw a man sitting upon a wall, about 20 rods from us, with his face towards the northeast, and when he saw us he jumped off and walked towards the north. Seeing he was going directly towards the rock which we had charged, my partner notified to me to tell him of the danger; I did so, and the rock having just then exploded, he shaped his course rather to the east. This was a few minutes before sun-set, and the light was pretty good; he had on a soutout, rather tight, of a brownish dark color, and a broad brimmed hat rather tapering at the crown; I took particular notice of him, but had not a full view of his face; I was about ten rods from him when I called to him. I saw a man exactly like him at the examination at Bristol, and told Thomas Hart that was the man I had seen on the evening of the 20th December, near the place where the girl was found hanging. I was not told this man was Ephraim K. Avery until after I had recognized him walking in the street with others; his whole appearance, height, hat and clothing were alike. The string round the girl's neck was like that

around the bags we had used to sit on when drilling holes in the rock, and a few days after she was found, we discovered that one of these bags had been unlaced and the string taken away. From what I saw of the man in the lot that evening, I believe the prisoner to be the same person. [Mr. Mason objected to the admission of this opinion as evidence, on the ground that it was not formed on a recognition of the countenance, but merely on that of the stature and clothing of the person identified.]

Cross-examined.—I did not observe whether the man I saw had spectacles on, nor whether he had a cane or bundle, but if he had, I suppose I should have noticed them. I saw him in the lot about 30 rods from the stack. I did not state it in the Court at Bristol that he was Mr. Avery, because I was not asked, but I was of the same opinion then as now. I knew I had sworn to state the whole truth, but if it had been you (to Mr. Randolph) or John Durfee, I should not have said so unless I had been asked. The bags were put into a cart, which was about 100 yards from the stack, and judging from the course he was taking when I saw him, he would pass within six or seven rods of the cart; but the bags were not in it then; we picked them up and put them there afterwards, with our tools.

16. *Richard Durfee*, was called by his son John Durfee (No. 1) when he first discovered the body, and corroborated his testimony with regard to its position, appearance, &c.

17. *William Hamilton*.—On the 20th December I left the place where I was at work near Taunton, at half past seven in evening of that day, and on my way home to Fall River, called at Benjamin Hambley's store to get something to drink; some persons were there reading Governor Haine's Speech, and when I rose to come away, some of them were looking at their watches and said it was 17 minutes to 9 o'clock; as I went on my way home, crossing the hollow near John Durfee's house, I heard screeches, and then stifled groans, as if from a female voice; I thought it was a woman, and some one beating her. The sounds seemed to proceed from the back part of the orchard, or in a direction through it; and I started to get to the rising of the hill to hear what it might be, but I heard nothing more.

Cross-examined.—The groans I heard were in the direction of the stack or near there. I heard them occasionally three or four minutes.

18. *Benjamin Hambley*.—I recollect Hamilton's calling at my store on the 20th December, in the evening; I also recollect looking at my watch at 20 minutes before 9 o'clock just as he left; but I do not remember whether other persons took out their watches. I believe my watch was correct, for it was a good new one which had been regulated three weeks by a watch maker of Fall River.

Cross-examined.—There was then about fifteen minutes difference between my time and that of Fall River, as regulated by the factory bells, for Mr. Gooding, the watch-maker, keeps his regulator ten minutes in advance of the factory time, and when I called on him two or three days after the murder, and about three weeks after he had corrected my watch, I found it had gained five minutes.

19. *Eleanor Owen*.—Lives at Tiverton, near Fall River; on the evening of the 20th December, when at home in my house, I heard screeches in a woman's voice; the factory bell was ringing at the time, and we had two cords of wood splitting up, so I told the boy to open the door to hear more distinctly, but I did not hear the screams again; it was half past seven o'clock by the bell when I first heard them.

Cross-examined.—My house is a quarter of a mile from John Durfee's stack yard; the wind was very high, and blowing in that direction. I mentioned that I had heard the screaming the very next day, when the body had been found.—[This witness, a native of Wales, spoke imperfect English, and was not distinctly heard at the Reporter's desk; but in the course of a long cross-examination, induced by the discrepancy between her statement of time at which she heard the screams and that of the witness Hamilton (No. 17) nothing further was elicited.]

SIXTH DAY.

Saturday, May 11.

20. *Ruth Cook*.—Was one of the women who assisted in preparing the body for interment, and gave a similar description of its marks to that of the preceding female witnesses.

21. *William Pearce, jr*.—I am the Ferryman at Bristol Ferry; I ferried Ephraim K. Avery across to Portsmouth on the 20th December, about 2 o'clock, P. M. He had on a sur-tout, or box coat, of a brownish color, and I think a black hat; he had not spectacles on, and I don't remember that he had any cane or bundle. I knew him well. The weather in the forepart of the day had been rough and blustering, but it became milder about noon, and we crossed in the sail-boat; I

had not crossed in the horse boat that day, it had been so windy, and that boat had not been got ready at this time. I do not remember whether the wind was rough in the evening, but it was very cold. I do not remember what course he took when he landed. I think he crossed with me at the time of the four-days' meeting, and then wore a cloak; and once before that meeting and the 20th December. On these other days I think he had spectacles on, but I am not certain; I think I saw him in boat on his return the next morning, but I did not distinguish who he was.

Cross-examined.—Whilst crossing, he asked me where the coal mine was, and I pointed it out, but did not direct him the best way to get there; I think he said Oliver Browning had

been after a boat to carry some coal for him. I think I never saw the prisoner cross the ferry without his cloak, except on the 20th of December. I would not say on my oath that he ever before crossed with me without his spectacles. It did not blow so fresh on the afternoon of the 20th of December, but that the horse boat might have crossed had it been ready; when landed I saw him mount the wharf but did not notice him afterwards.

Direct examination resumed.—The time at which the prisoner crossed may possibly vary from the time stated, but if so it was rather later than earlier. Our time at the ferry varies a little from the Bristol town time, but whether it is faster or slower, I cannot say. I carried Mr. Avery over after the stage from Bristol to Providence, which crosses between eleven and one, had passed; he was the only passenger in the boat at the time; and he paid double ferrage for putting the boat off.

22. Jeremiah Gifford.—I keep the ferry at Bristol; I did not know Mr. Avery by name when he crossed on the 20th December, but he crossed somewhere between two and half past two that afternoon, for I saw him land on the wharf at Portsmouth at that time. He knocked at my door on his return at a quarter before ten the same night, when I was in bed and asleep. The noise woke me and I got up; I first went to the front door and could not see any one; but, when I opened the back door, I saw Mr. Avery standing in the sink room:—he remarked it was cold and blowing very fresh, but he wanted to cross that night. I replied it was very late, and he said, "scarcely so late as you imagine;" but I said "we'll look at the clock," which we did, and found it wanted fifteen minutes of ten o'clock. He requested me to put him across that night, saying that Brother Warren had informed him he could cross at any hour; but I said that the weather was so "tedious" that I did not think I should go abroad, and asked where he had been at so late an hour. He replied that he had been up the island on business, and had he known he could not have crossed that night he should have gone to Brother Cook's or to Brother Ira Cook's and slept; and the reason he assigned for wishing to cross was that his family was unwell, and would expect him home. I said there were physicians in Bristol if his family needed them, and wished him to go to bed; he said he would if I would give him a draught of water, and having done so he went to bed. I did not notice any thing peculiar about him, nor did he complain of being lame or tired. In the morning, I told my son to take him over, and spoke to him before he went. I recollect that he had on a brownish surtout coat, rather longer than a common box-coat, and a large sized black hat with a wide brim. To the best of my recollection he had no spectacles on either that morning or the night before. My daughter Jane was up, and probably saw him before he went away.

[The witness proceeded to describe the relative localities of the ferry and Howland bridge to certain roads and footpaths in the neighbourhood, which a stranger or a person well acquainted might select to arrive at Fall River over Howland Ferry bridge.]

Cross-examined.—My conversation with Avery, could not have occupied more than three minutes, including my fetching him the water, for I was in my shirt only, and it was very cold; I looked at the clock immediately. He did not say he had been long at the door, or that he had any difficulty in waking me.—I may have said at Bristol that he arrived at half past nine.—The coat he had on was like the one he wears now.

23. William Anthony.—I reside at Portsmouth, and remember that on the afternoon of the 20th December, I saw a person passing between my house and the pond below, towards the south, I did not observe his dress very particularly, but I recollect he had on a dark surtout coat,—at least I think it was a surtout and was a man above the common height. When I saw him first he was over the wall, pretty well down to the pond, about 50 rods from me, when he came to the open space at the bars I saw him distinctly. I do not know the exact time, but I know it was after dinner, for I had foddered the cattle and was then cutting wood. When I first saw him I thought it was one of my neighbors gunning, but when he came to the bars I saw it was not.

Cross-examined.—Severely as to his recollection of the day. I was at Judge Clark's on the 18th, and took a receipt of his for some wool. On the 19th, I was at Oliver Green on business. On the 20th, my child being taken very ill, I went to Dr. Luther's, recollect meeting him on my return, and that I stayed at home during the remainder of the day. The person for whom I first mistook the prisoner, or whoever it may have been, was Mr. Boyd, but he was at Fall River market at that time, and I knew the stranger was not him, as soon as he came to the bars.

24. William Carr, on his way home from Fall River market to Portsmouth, on the 20th Dec., remembered to have met a person resembling the prisoner in dress and stature, about twenty rods from Charity bridge, between witnesses's house

and it, about half past two P. M.

25. Charles Carr, brother of the last witness, was with him at the time, and recollects the above circumstance. "The man was tall, had on a surtout of a dark colour, and a handkerchief tied like a cravat over the chin; I said to my brother he is rather proud not to look round to us. I did not know Mr. Avery at that time; but next day, when I heard of the murder, I recollected having met the person I have described."

26. William Cranston.—I keep Howland ferry toll-gate, commonly called the Stone-bridge, and I recollect that about 3 o'clock P. M. on the 20th December, a man, looking like a lawyer, a doctor, or a minister, came up and said "It is a cold, blustering day." I invited him into the house, but he declined, and said he was bound to Fall River. He had the money in his hand, paid me, and walked on; he was about six feet high, had on dark clothes, and a black hat, with rather a broader brim than this [showing his own]. I did not observe that he had any bundle or cane, nor that he had any spectacles on. I shut the gate about sundown. There is a way by which passengers can get round the gate at night, after it is closed, if they do but know it, which I call doubling Cape Horn; they have to get down the wall on the beach, just where the tide flows, and step up the other side; and I sometimes look to see if any people have left tracts of passing that way. On the following morning I observed the tracks of a man who had passed in a direction from Fall River to the Portsmouth side. The place being soft with the tide, the marks were quite fresh and distinct. I think I could recognise the man who crossed the bridge—I saw him in the court house at Bristol, and that person I believe was the prisoner, whom I now see; I never knew him before, nor did any one point him out to me, but I knew him pretty quickly after I got into the court house.

Cross examined. I may have testified at Bristol that I thought he had a spencer on, for this reason: when he left the bridge, he took up the tails of his surtout upon his arm, so that it looked like a spencer; but when he had taken out his handkerchief, he let the tail drop, and I saw it was a surtout coat; it was not a double breasted coat, but one which buttoned up tight to the neck. I did not point him out at Bristol, because I did not know it was my duty to do so, unless I had been asked. I never said he had passed over the bridge that day, riding on the front of the stage. By a Juror: I do not remember whether he had an extra handkerchief round his neck.

28. Robert P. Lee was called to prove a negative to an anticipated point of the defence. I left Fall River on the 20th Dec. about 12 o'clock, and got to Stone-bridge about half past one; left Lawton's tavern at half past two; crossed the bridge on foot, and went to Oliver D. Green's, staid there three quarters of an hour, and went on to Newport, taking the ordinary east road. I met no person whatever, except Abraham Barker, between the bridge and Green's; but, afterwards, I met a short man, named Peleg Avery, who had on a pea jacket, about three quarters of an hour before the sun went down, and no other person. I arrived at Newport at a quarter past six.

Cross examined: I was about one hour and a half walking six miles and 15 rods.

29. Isaac Burdick, deposed that he had walked from Fall River to the stone bridge in one hour and ten minutes, five years ago, on an occasion that caused him to be in a great hurry to get home.

30. George Lawton. I keep the Bridge Tavern at Tiverton; it is situated on the east side of the stone bridge. I remember to have noticed a man on the 20th December last, crossing the bridge on foot in a very fast walk. This was at about three o'clock. He was dressed in dark clothes, a surtout coat, and a broad brim'd hat. I noticed him particularly, because he seemed lightly clad for the weather, and I thought he was walking fast to keep himself warm. I was called to attend the examination at Bristol, and arrived there just as the Court adjourned for dinner, and a person near me observed, "Three goes Avery." Three persons were coming down abreast, and I observed that the middle one exactly resembled the man whom I had remarked crossing the bridge: I immediately felt quite serious on the subject. His person and appearance were so exactly the same that I could not discover any difference between them; so entirely alike, that I felt peculiarly.

Cross examined: I do not swear positively that he is the man, but I say he exactly resembles him.

31. Anna Norton. I live with my father at Tiverton, near Fall River; about 3 o'clock, P. M. on the 20th December, I saw a gentleman coming from the bridge, and he was walking so very fast, that I said to my father, "If that man continues to walk so very fast, he will get to Olney before night." I thought from his dress that he was a Methodist Minister, from Bristol, or the Island. His coat appeared to me to be a surtout or box coat, of a dark mixture, nearly black, and he was rather a tall man. Although it was in the dusk of the evening, and he was walking from me, I had a view of his face, and observed that

he had dark eyes and hair.

Cross-examined. I believe it was to Col. Harnden that I first remarked he looked like a Methodist minister; and it occurred to my mind that it was Mr. Avery, for I had seen him once before; I believe I said at the time, "There goes brother Avery," but I will not swear it was him. He had no whiskers, and I have never said he shaved them off since that time; I may have said since that he shaved his whiskers, because I have heard it said that he did so after he was apprehended. I have observed that he looked very different at Bristol because he appeared pale and emaciated, as though he had broken his rest.

32. **Gardner Coit.**—I am barkeeper at Lawton's tavern, Fall River. On the evening of the 20th December last, about six o'clock, a gentleman came to the bar and said he wanted supper. He did not come into the bar room, but went into the sitting room, the door of which is opposite to the bar. Supper was laid for him in the dining room, and he retired thither. He was a tall man, dressed in a brown or dark colored surcoat coat, and had on a flat fur cap. I do not think I could now recognise his features, for I did not then particularly notice them. He appeared in a great hurry, and went out immediately after paying for his supper. I should not think Mr. Avery differs at all from that man in height. He brought no horse with him, or I should have received pay for it. At the Bristol examination I saw a man sitting at the corner of the table who resembled the person I speak of, and he was the prisoner. Whilst he was there the girl came for a glass of brandy for him, for which he paid.

Cross-examined. The girl who attended on him, was Margaret B. Hambley—she appeared to be about thirty-five years of age. There was a pedlar in the house at the time, named Alden, but I don't think he took supper with him. I was not present when Margaret B. Hambley testified at Bristol. I saw Mr. Avery, however, when he was brought to Fall River from Rindge, by Col. Harnden; he had then spectacles on and an outside coat.

33. **John Borden.**—I live at Tiverton. On the night of the 20th December, about twenty minutes past nine, I was on the road from Fall River, and saw a rather tall man at a short distance ahead of me; we were then about half way between Fall River and Stoney Budge. He was walking at about an ordinary rate. I have not seen him since till I see him now. It could not have taken me more than ten minutes to walk from where I first saw him to my house, and when I had lit a candle I found it was just twenty minutes past nine.

34. **William Gifford.**—I am the son of Jeremiah Gifford, the keeper of Bristol Ferry, and remember putting Mr. Avery across to the Bristol side on the morning of the 21st of December, after he had slept at our house. I said to him, "Mr. Avery, I did not know you had a meeting on the Island last night;" and he replied, "I had not a meeting, but I went to the Island on some business of my own." I did not see him when he came over from the Bristol side the evening before. I think he had spectacles on that morning, but I did not observe any bundle or cane. Not cross-examined.

35. **Jane Gifford.**—I am the daughter of Jeremiah Gifford, of Bristol Ferry, and a sister of the last witness. I saw Mr. Avery after he had come down stairs on the morning of the 21st of December last, and shook hands with him; I said, "Brother Avery, I did not know you was going to preach on the Island last night;" and he replied, "I did not preach there, I had business with Brother Cook." He added he was sorry he could not get over the ferry the same night, because his family was sick. There is a John Cook, a member of the Methodist church, who resides about two miles from our house, and a William H. Cook, also a member, who lives near.

Cross-examined. I slept in a room adjoining my father's, and heard him say it was half past nine o'clock.

36. **Mrs. Harriet Hathaway.**—I reside at Fall River and knew Sarah Maria Cornell. She boarded with me. The last time I saw her alive was on the evening of the 20th December. She had requested me at noon to get her supper ready before dark, which I did, and she took it before she went out. She changed her frock, putting on a better one than she usually wore; and having fastened her cloak and calash, she went out saying, she was going to Joseph Durfee's, and should, perhaps, return immediately, but five, if she did not, she should be home by nine o'clock. I waited up for her till ten, and then went to bed, closing a light, and the door unlocked. The next morning I heard from Seth Darling that he had been found dead. She worked at Mr. Anthony's mill, the usual hour of leaving which is half past seven, but on that evening she came home much earlier. She had been unusually cheerful throughout that day. She had boarded with me three weeks, during which time no one had issued her. I delivered her trunk and band box to John Durfee, the key of which was found in the pocket she had on. I should know the comb she usually wore from its having lost two of its end teeth, [comb produced and identified]. I

have seen in her possession three letters: one pink, one straw coloured, and one white, [letters produced]. These appeared to be the same; she never, that I know, read them aloud in the house; no other person boarded with me. She was not in the habit of being out in the evening, except on sabbath and class meeting evenings. I never saw the contents of her trunk or band box before her death, and I am not aware that she had a pocket book.

Cross-examined.—I saw the letters lying in her lap, and I think I could swear these are the same; I noticed that the direction on the white letter was written in a larger hand the others. I saw her with them about a week before her death, and said something concerning them to my daughter Lucy.

37. **Lucy Hathaway.**—I am the daughter of the last witness. I worked in the same mill and in the same room with the late Sarah Maria Cornell; on the afternoon of the 20th of December last, she informed me of her intention to leave work earlier that evening than usual, as she had a particular engagement, and she accordingly left at half past five; she had been remarkably cheerful that day, for she was generally very sad, and held little conversation; she was particularly so on the Tuesday preceding the Thursday on which she died, for she expressed fears that she would not be allowed to leave the mill early enough on Thursday to fulfill an appointment she had in the evening; but she added, "I am determined to go, whether they will permit me or not." On that evening, about five minutes before she went out, she came to my window to comb her hair. I know this to be her comb, [produced] but it was not broken then. I knew her a week before she came to board at our house; she came on the 1st of December, and the reason she assigned for changing, was that she wished to be more retired—I did not know her situation at that time. On the afternoon of the Saturday following the day she came to my mother's, I recollect her receiving a letter. She went that day to the post office to enquire for one, and on her return, she held it up and showed it to me; it was written on white paper; I afterwards saw the writing inside, which was not more than two or three lines, but did not read them. It was marked one cent. postage. [The white letter produced and identified.] I also saw her with 2 other letters, 1 pink, and the other yellow or straw coloured; I afterwards casually saw the contents of these, but did not read them. [These two coloured letters were produced and identified.] When she showed them to me, I remarked that one of them appeared to be written in a hand more like a lady's than a gentleman's; but she replied they were both written by one person. [Upon some rule of evidence urged by the prisoner's counsel, which we neglected to note, the admission of this last answer was objected to, and the court ruled it out.] When she showed me the colored letters, she broke open an envelope in which they were sealed, and put the white one in with them. The day before her death I saw her with a pocket wallet; one of the girls came to borrow some money of her to buy an apron of a pattern she had just seen; Maria Cornell said I will have one too, and addressing me said, "and you have one, for then we shall all have them alike." She said if I would wind a bundle of yarn for her that evening, she would make the aprons, which she said she should have time to do whilst her loom, which was out of order, was being repaired.

Cross-examined.—I saw the string with which she was strangled; I never saw a string of that size used for hanging up the harness of the looms.

Direct resumed.—I know from observation, and her own communications to me that she was out of health, and was so confidential as to tell me that her illness was of a kind that could afflict females only. I knew that her periodical appearances were wanting, but did not infer her real situation; I thought she had taken cold, and asked her why she did not take medicine, and she replied she had taken pills of Dr. Wilbur. She afterwards said she had not been well since she went to the Thompson Camp-meeting, and that something had occurred there to cause her ill health. She did not state what it was, but I began to have some doubts. Maria Cornell never went out evenings, except to meetings, whilst I knew her. [This young woman sustained this painful examination with an unaffected modesty and firmness combined, which won the respect of every one who heard her.]

After she had resumed her seat beside her mother, she replied to a question of the counsel in the following words: [She said to me in reference to the Thompson Camp Meeting, "I will never go there any more—I know some very disgusting things which took place there, between a minister and a church member, and that minister too a married man." And now," said the witness, much affected, "you know as much about it as I do."]

The Court then adjourned to Monday morning, having at the request of the Jury, consented that they should walk out during Sunday for exercise, if constantly accompanied by sworn officers; and the officers were sworn accordingly.

SEVENTH DAY.

Monday, May 13th.

39. *Harvey Harnden*.—I live at Fall River; I was present at the examination at Bristol, as one of the Committee appointed to investigate the circumstances attendant on the death of Sarah Maria Cornell. On the Saturday evening of the first week of the examination, I called at Iram Smith's store, requesting him to let me have what was remaining of a ream of letter paper which had been in his store on the 8th of December. I received this paper. (Produced.) There is more here than I received. I think I received nine half quires, and one whole one. At the time Smith handed me the paper, he had the half sheet I wanted in his hand. (Half sheet produced and identified, by the pencil mark "half sheet," written on it.) I produced it to the court at Bristol, and I there compared it with the other half sheet of paper. (Letter on half sheet produced.) I found them agree perfectly. I examined the pieces with a microscope. The fibres of the paper pass from one part to the other; in the water mark there is a very striking resemblance with the paper at Smith's. In some sheets there is no difference; the water mark is only on one side of the sheet. The half sheet I produced in Bristol was left in court. I know this memorandum, (produced, written "6 quires, 14 sheets and a half.") I arrested Mr. Avery after he left R. Island, in the town of Rindge, N. Hampshire, just above the Massachusetts line, at the house of a gentleman named Mayo. (The witness sketched its style and appearance.) It was a large two story house. There were 6 persons with me; one of whom (Mr. Foster) accompanied me into the house; the other five remained outside at different points. I went through the house into the room in which the family live. I would here remark that this room was in a porch built on the end of the house, instead of back as is usual; and that the front of the porch was parallel with the front of the main building, although thrown back perhaps six or eight feet, so as to give a window in the end of the main building into the front room. There were two gentlemen and a lady sitting in the room. When I entered, I inquired for Captain Mayo; and, on one of the gentlemen declaring himself to be the same, I asked if he knew a person of the name Ephraim K. Avery. He denied any knowledge of him, & I then said I must search the house. At this moment the lady who sat in the room, and whom I afterwards found to be Mrs. Mayo, got up, went out into another room without a light, and closed the door after her. I very soon heard a person who came to the house with me, and whom I had told to be careful and see that no one left it, rap on the window with his fingers. I took the only light there was in the room, and passing through the same door by which Mrs. Mayo had gone out, I found myself in a small room back of a front room, with a door opening into the same front room. I entered, and went thro' the front room into the front entry, and from thence up stairs. On arriving at the head of the stairs, I discovered the door opening into the chamber over the front room opposite to the one I have named, to be open. On looking in, I observed that there was a low fire on the hearth, and a light stand before it, with a candle on it, the wick of which was ignited as if it had that instant been blown out. I entered, but saw no person. I there saw a bed which had been tumbled, and found by placing my hand in it, that some one had recently left it. I then went into a bed room at the back of the chamber, and found no one there. I then returned into the front entry chamber, and there saw Mrs. Mayo standing in the other front chamber. I then went into that, while she passed me into the entry chamber. I searched that chamber, and then two smaller rooms at the back of it. After this I returned into the front entry chamber, and thence I went up the garret stairs, which led from it. On entering upon the stairs, I found there was a trap door over them at the garret floor; I turned it up, but to no purpose. I then returned to the entry chamber, and from thence into the chamber in which I first made search, but did not find Mr. Avery. [The witness entered into some further descriptions, and deposed.] On arriving again in the front entry below, I discovered that the door into the front room was not entirely closed, though I distinctly recollected that when I passed up it was shut. I then placed my hand against the door, and found there was a gentle pressure on the other side, and in withdrawing my hand, the door would return gently to its former position. I opened the door with one hand, holding the candle in the other, and behind the door I discovered Mr. Avery.—He stood quite motionless, and, from his appearance, was more agitated than any person I ever saw. He had on either a surcoat or pea-jacket and held in his left hand a cap, which I have no recollection of seeing afterwards. When he left the house, he had on both a pea-jacket and surcoat. Since I had not seen him, which was two weeks, he had let his beard grow, except on the front part of his face, (witness described,) which was very materially altered his appearance. I presented my hand to him, and said, "Mr. Avery, how do you do?" He attempt-

ed to speak, but his utterance failed. I then took him by the hand and said, "do endeavor to suppress this agitation; you need fear no personal violence; you shall be kindly treated;" and requested him to step into the entry where there was more air. He did so; and then said, I suppose you cannot legally take me from this place without a precept from the Governor of New Hampshire. I replied I had not such a precept; but that I supposed I had a warrant sufficient for the purpose, which I procured from a Justice. He then stated that his counsel had told him he could be taken from no State without an application to its Governor. I told him by a reference to the laws of New Hampshire, I found it otherwise; that if he would go into the other room I would show him the precept; and that if I should fail of convincing him that the arrest was completely legal, I would leave him and go without him. After some further conversation, the precept was read to him by Mr. Foster, the deputy from Fitz William. Mr. Avery was satisfied of its legality, and said he would return with me to Bristol.

I then mentioned to him that the precept directed the Sheriff to carry him before some Justice in that county for examination. To this he demurred, and wished the privilege of returning without that ceremony. I consented that it should be waived if he would sign a request to that effect, together with an agreement that he would hold the Deputy harmless for disobeying the precept. He consented. We left Captain Mayo's between eleven and twelve, and went up to the tavern in Rindge, where Mr. Avery shaved, having previously expressed a wish to do so. His face then appeared as it had done at Bristol.—[This witness brought Mr. Avery to the line of Rhode Island, where he delivered him to the agent appointed to receive him by that State, on Friday, January 25th.]

Cross-examined.—Heard the statement made by the prisoner's counsel at Bristol, offering sureties for his appearance at the March term of the Superior Court of Rhode Island. [This witness was cross-examined at length as to the proceedings of the Committee of Vigilance at Fall River, as whose appointed agent he had acted in arresting Mr. Avery.]

39. *William Lawless*.—I live in the lower part of the town of Bristol. On the morning of the 21st December, about a quarter of an hour before sun-rise, I saw Mr. Avery coming from the ferry, and walking northward. He had in his hand something about ten or fifteen inches long rolled up in a dark red colored handkerchief; "I undertook to overtake him," for I was particularly acquainted with him, and attended his meeting; I said it was a very windy morning, and asked him where he was from so early; he said he had come from the Island, where he had been on business yesterday, but had been unable to get home last night on account of the wind. I did not agree with him as to the wind, but I did not contradict him. He did not say at whose house he had been on business. Not cross-examined.

40. *Zeruiah Hambley*.—I live at Tiverton, close by the old meeting house at the corner of the lane that turns down to the shore. On the evening of the 20th of December about half past seven o'clock, I went down the lane and overtook a lady and gentleman, walking arm in arm, towards Mr. John Durfee's, whose house stands on the main road. He was very tall; she was rather short, and had a cloak on; but though I got close to them I did not know them, nor did I observe what sort of coat the gentleman had on, but he had not a cloak on. They turned down close by our house. Not cross-examined.

41. *Amy Durfee*, who worked in the factory with the deceased, corroborated the testimony of Lucy Hathaway (No. 37) relative to the preparations made by the deceased before she left the mill on the 20th December; and identified the letters and comb before produced, as those which she had seen in her possession.

42. *Nancy Gladding*.—I reside at Bristol, and am well acquainted with Mr. Avery. On the Tuesday of the week in which Sarah Maria Cornell was found dead, I invited Mr. and Mrs. Avery to spend the afternoon at my house on the following Thursday. He said "we will accept for Friday, for on Thursday we cannot so well come," but he did not say why he could not come on Thursday. They had a child which had been sick, and Mrs. Avery, who was herself unwell, said she could not go; but he replied she must make that visit, and accordingly they came on Friday afternoon between three and four o'clock.

Cross-examined.—There was nothing unusual or peculiar in Mr. Avery's manner that evening; he was as cheerful and social as usual, made a prayer before he went, and his whole deportment was that of a christian and a gentleman.

43. *Rebecca Dimond*.—In the month of November last, I lived with my sister at Bristol, in the upper part of the house occupied by Mr. Avery and his family. I know Betsey Hills: she came into the town with them, and stayed until the early part of the fall; she was not there when Maria Cornell was hung. I do not remember exactly how long she had been gone, but I do not recollect seeing her there after the Thompson Camp Meeting. Mr. Avery's usual outside clothing was a dark surtout coat; he had but one cloak, which was a dark camblet; one; the surtout is the one which he has on now; I saw the cloak in the house when he was absent on the 20th December, and the day following, when he went to Mrs. Gladdings, he did not wear it. I was at home on the morning of the 21st when he returned, but I did not hear him say where he had been, and whilst I was with him and Mrs. Avery at Mrs. Gladdings, I did not hear any allusion to his absence from home the preceding night.

Cross-examined.—I never saw him with any other outside garment than the surtout he has on now, except his cloak, which he wore occasionally, and at funerals. He was in the habit of praying with his family after breakfast, and did so on the morning of the 21st. I saw nothing unusual in his manner. I think I can say he lived in harmony with his family, and so far as I know myself, he was a kind father and husband.

44. *Sylvester Lusher*.—I saw Mr. Avery one morning before sun-rise, coming from the south part of the town of Bristol, wearing his surtout, and with a red handkerchief in his hand; I just exchanged the morning ceremony with him, but I am not certain it was on Friday, the 21st December, though I am inclined to think it was between the day on which she was killed and the one on which we heard of it. Some ladies came and told us the news on Saturday evening. Not cross-examined.

45. *Iram Smith*.—I resided at Fall River in December last. I know Mr. Avery and Mr. Bidwell; on the 8th of that month they came into my store about 10 o'clock in the morning.—I think I recollect Mr. Avery's asking for some letter paper, and believe he got it himself. I am not positive that I saw him write, but if he did it was at the desk; I have some recollection of seeing him at the desk behind the counter, but I will not swear it. He asked me for a wafer, and not having any, I got one at the next door of George Barry's wife; I think it was a common red wafer. I did not charge my mind with these circumstances, and did not think of them until twenty days afterwards when this event became talked of. The writing paper now produced appears to be the same I had in my store at that time; its water mark is the same; I delivered this to Col. Harnden. I know this half sheet [produced]. I was counting the quires at the request of Col. Harnden to see how much I delivered to him, and discovered this half sheet in about the middle of the half ream; I compared it with a letter written on another half sheet and it agreed well; there was no want of fitting in the rough edges, and they appeared to have been torn from each other; Col. Harnden wrote "half sheet" upon it in pencil; I wrote my name on it at Bristol that I might know it again.—I bought this half ream of paper of a pedlar. There was something said about the time at which the stage passed, and it passed by my store, going west whilst Mr. Avery was there.—I did not observe which way he went when he left, nor at what time; but I think Mr. Bidwell, the minister of Fall River left first. There was something said about writing a letter to the editor of the "Village Recorder," concerning an article which had appeared in that paper, but I think Mr. Avery said he should write it at home; I know Mr. Avery well, and was a member of his church. [The white letter found in her box, dated December the 8th, was produced and identified as the one which witness had compared with the half sheet at the Bristol Examination.]

Cross-examined.—The pedlar of whom I bought the paper, called again and asked me to count it, saying he had sold me too much, and I found half a quire above the quantity I had paid for. I will not swear from my own memory that I got the wafer for Mr. Avery, or whether he took away a sheet or half sheet which he had written on. I do not recollect tearing a sheet of paper in halves between the 8th of December and the time this half sheet was given to Col. Harnden. I don't think I put this half sheet between the quires myself, it would not have been according to my habit of business. The paper was kept at the back of the desk, and many persons might have had access to it; I am not constantly in the store, I sometimes leave three or four times a day. I had a man with me about that time, who attended the store. I will not be positive that the day on which I got the wafer of Mrs. Barry was the one on which Mr. Avery was in my store. Other persons have written at the desk occasionally; I could name several. Mr. Simmons for instance.

Direct resumed.—No person can reach the paper without going behind the counter. [This witness gave his testimony with

evidently great reluctance.]—Recess till 3 P.M.

46. *George Gifford*.—I was at work across the boom of my craft on the 20th December last, hauling off the snail, when I saw a man step out of the Fall River ferry boat and walk off east.—If the prisoner is the man he can tell which way he went.

Cross-examined.—I don't know whether it was a man or a woman, but it had not a woman's clothes on.

47. *Walter D. Briggs*, son of Lemuel W. Briggs, (No. 4) the Postmaster of Bristol, corroborated his father's testimony. 48. *Jeremiah Howland*.—I know Mr. Avery; I saw him come into Iram Smith's store on the 8th of December with Mr. Bidwell. I saw him with writing paper in his hand, but did not notice whether he wrote, nor in what part of the store he was at the time. I am certain I heard him ask for paper, but do not remember whether he stated the purpose for which he wanted it. I don't recollect whether he took the paper himself or had it handed to him; it was not a whole sheet, however, which I saw in his hand. There was some talk about writing a letter to the editor of the "Village Recorder," and Mr. Avery said he would write one, but also said he should not have time to write it there. He was there waiting for the Bristol stage, but whether he or Mr. Bidwell went out first I did not observe.—He turned to the left when he went out, which is the way to the Postoffice and the stage office.

Cross-examined.—I have frequently been in Iram Smith's store when many others have been there, and have seen several persons write behind the counter. I never went behind it and tore a sheet of paper in half.

49. *Stephen Bartlett*.—I drive a stage from Bristol to New Bedford. I am well acquainted with Mr. Avery. I carried him to Fall River on the 8th of December last. He got out at Lawton's where the stage always stops, and when I passed on, I saw him near the gate of the Postoffice. Mr. Avery frequently came to our stables when he was going away, and seemed particularly fond of horses, more so than most men. He some times drove my stage considerable distance; and seemed fond of driving. I had previously carried him five or six times, and recollect his going to the four-days meeting at Providence. He called on me at Bristol on Sunday, the 23d December, and desired me to call on Mr. Bidwell at Fall River, and ask him whether it would not be advisable to go to Lowell and obtain information respecting the bad character of the girl. I did not know at this time that Mr. Avery had been suspected of her murder, but supposed he merely referred to the suspicion of his being the father of the child. He made this request about nine or ten o'clock on the Sunday morning after her death. I know Mr. Avery very intimately; we were frequently together, and I have often visited at his house.

Cross-examined.—I did not suspect him of alluding to her murder when he wished me to advise with Mr. Bidwell. He said the deceased was a loose bad girl and that it was important he should obtain evidence to rebut the charges which might be brought against him. He said she had a revenge against him for expelling her from the church at Lowell, and had laid this trap for him. I don't recollect to have seen Mr. Avery at Bristol on the 20th December. I told Dr. Wilbur I had seen him, but I don't exactly remember whether I did see him or not.

50. *John Orswell*.—I was the engineer of the steamboat King Philip, in November last, running from Fall River to Providence. She went Mondays, Wednesdays and Fridays; and returned from Providence, Tuesdays, Thursdays and Saturdays. [The Attorney General handed him a letter written on pink paper.] I have seen this letter before, first in Providence in the hands of a gentleman who afterwards proved to be Mr. Avery, the prisoner. After breakfast, between 8 and 9 o'clock, he came down the gangway plank, and asked me if I would be so kind as to take a letter for him to Fall River. I told him he could put it into the letter box, but he said he did not want it to go so, he wanted it delivered as soon as the boat got in. I told him I did not carry any letters myself, and that the hands were not allowed to carry any, but he said it would do him a great favor if I would carry it, and I therefore took it, and nine pence (12½ cents) which he gave me with it. When I came to Fall River, I inquired of several persons where the person of the name of Cole, at whose house it was directed to be left, resided, and as soon as I had ascertained, I carried it and delivered it to him. The person of whom I had received it wore a cloak, and a broad brim black hat; but I did not particularly notice his clothing. After the death of Sarah M. Cornell, became known, Mr. Cole spoke to me about the letter which I had brought for her to his house, and asked me if I knew the person who gave it me; I told him I did not know him by name, but that I should know him personally if I saw him again, and on Christmas day, when the boat came into Bristol, I went to Mr. Paul, the deputy sheriff, and asked permission to see Mr. Avery. I accordingly went with Mr. Paul, and when I entered the room which was up stairs, I saw three or

four gentlemen sitting, and expected to find Mr. Avery, but could not see him among them. Mr. Paul, however, went for him and I recognized him the moment he entered the room.—I recognized him by the notice I took of the features of his face when he was persuading me to take the letter. Mr. Paul said this is the engineer who is supposed to have carried a letter from you to the deceased. Mr. Avery advanced and shook hands with me, and asked me if I had carried a letter for him; I said I had never said so, but that I had come to satisfy my curiosity as to his being the person who did give me the letter. He asked me whether I had any reason to suppose he was the man, I replied again I had never said so. He asked me how he was dressed, and I repeated he had on a cloak; he then asked if I could swear he was the man, and I told him I had never said I would; he then said it would give him and his friends great satisfaction to know whether I would swear in Court he was the man or not. I said in reply, that if it would give any satisfaction to him or them, I would there say what I should probably swear, that to the best of my recollection and judgment he was the man. Mr. Avery then asked me if he had glasses on when he gave me the letter, and I said no. He then inquired of the gentlemen in the room whether they had ever seen him out of doors without spectacles on, and they said no. He went into another room and returned with glasses on, and asked me if he looked like the man, and I told him his glasses did not alter the features of his face a bit. Shortly afterwards I went away with Mr. Paul. There is no doubt on my mind as to his being the man.

Cross-examined.—I don't know that any person went with me and Mr. Paul to Mr. Avery's except Mr. Durfee, and he went by without entering. I did not know any of the persons who were present. To the best of my recollection he gave me the letter about 9 o'clock or a little past; we had finished breakfast and began to fire up a little to raise the steam. I don't think there were any passengers then on board; we regularly start at 10 o'clock without variation. I recollect hearing some person say there was then a four-days meeting in Providence. I was at the Bristol Examination and stated the steam had begun to rise as I observed it had after I had taken the letter; we begin to light the fires about half past 8 o'clock, when we started at 10; but whether it had rose considerably or not I cannot say. Before I saw the letter again I said there would probably be marks of grease and sweat about it, for my hands were dirty at the time with fixing the works, and I think the letter shows it now. [These marks are quite apparent on the letter.] I don't think he had any shirt collar above his neckerchief. By his conversation and the delicacy of his hand, I supposed he was a minister at the time, and I stated so to Tompkins soon after we started; he looked very snug about his dress, and there was also something in his manner which led me to think so. I told Avery that to the best of my knowledge and belief he was the man. There was a person on board the boat that morning with a horse, but I believe he was forward when Avery gave me the letter. I never said to Mr. Page or any one else, that Avery was not the man. I did not see any crowd about his house when I went to see him; there may have been some men and boys standing in the lane near the house, but there was no crowd when I came in or went out. I never talked about Avery's having a resemblance to the man who gave me the letter; I never said I was not confident enough to swear he was the man.

Direct resumed.—I don't know who the man was on board with the horse, though I have seen him on board since; he was at that time making a preparation for his horse before he brought him on board.

51. *Elijah Cole.*—I have resided at Fall River a year last March. In November last, I received from Mr. John Orswell, the last witness, a letter directed to Sarah Maria Cornell, "To be left at Mrs. Coles'." I put it in the window; and when my daughter came in, desired her to take it to the deceased. She boarded at my house eight weeks and four days. No man ever visited her at my house to my knowledge. Before she left I certainly mistrusted her situation. Her temperament and spirits were more irregular than those of the members of my

family in general; and she sometimes appeared lost in thought.

Cross-examined.—She sometimes went out evenings to meetings. She was introduced to my family by Ruth Lawton; she was I believe a church member, at least she was considered as such.

52. *Betsy E. Cole.*—I am the daughter of Elijah Cole, the last witness; I remember that my father brought in a letter on the 29th November last, directed to Sarah Maria Cornell, and desired me to give it to her. She had retired to her room, and I knocked, but she did not answer, and I delivered it to her the next morning. I saw the letter afterwards, and discovered she had three others. She was often gloomy and sad, and of late had seldom been cheerful. She was never out evenings except twice a week to go to her usual meetings.

53. *John I. Paine.*—I reside at Providence, and knew Sarah Maria Cornell; I first knew her in May last, when she was with her brother-in-law, Mr. Grindall Rawson. I was at the Thompson Camp Meeting in August last, and at the request of Mr. Rawson and herself, I took Maria Cornell with me in a chaise; she had been disappointed of the conveyance in which she expected to have gone with her sister and family. When we came to the camp ground, I took her trunk for her to the house of Mr. Elliott, about a quarter of a mile from the ground, at her request, and saw no more of her during the meeting.—She did not return with me. I saw nothing in her conduct improper or unbecoming in any respect. I did not see Mr. Avery there.

Cross-examined.—She was employed by her brother as a tailoress, and I became acquainted with her in the shop where I had clothes made during that summer. I was not particularly acquainted with her; not more so than other persons who came to the shop. I then lived at Woodstock, with my brother on a farm belonging to my father, about a mile and a half from Mr. Rawson's. I am not a Methodist though I was educated at a Methodist school. I believe I wore at the Camp Meeting a blue coat, and probably light cheek pantaloons, but I cannot remember whether I had on a straw hat or a black beaver one, but it may have been my straw hat bound with green. I cannot designate any persons whom I heard preach there, for I did not know them. My object in going to this meeting was to hear and see as others did. I did not observe Sarah Maria Cornell in company with any young man during the meeting. Her deportment whenever I saw her at home was as perfectly good as that of any woman, and I never heard nor suspected any thing against her. I never knew of any illicit connection between her and any man, and I solemnly swear that I never had such a connexion with her myself.

54. *Lucretia Rawson.*—I am the wife of Mr. Grindall Rawson, and sister of Sarah Maria Cornell, the deceased. I know she went to the Thompson Camp Meeting with Mr. Paine, and returned with Benjamin F. Saunders, a young man apprenticed to my husband. I saw her at the meeting, and she walked round with me to the different tents, and I eat with her at the common table—I did not see Mr. Avery there that I know. I did not know him at that time. [The witness here seemed greatly affected and shook her head in a very impressive manner.] My sister gave me to understand what her situation might be in September last, and informed me of its cause. She dated her situation from the time of that meeting. I had the means of regularly knowing her peculiar state of health as a female. I washed her linen, and know that she was as females periodically are, exactly one week and one day before the Thompson Camp Meeting. She had always been perfectly regular prior to that time, but subsequently to that time the appearances were suppressed, and I ascertained that she was pregnant. I never knew of any attempt of hers to commit suicide, nor ever perceived in her a state of mind tending to such an act.

55. *Ruth Lawton.*—I worked at Mr. Rawson's with the deceased, and slept with her until the period of the Thompson Camp Meeting. I know she was in regular health as females are when not pregnant until that time. The Court adjourned till 9 o'clock, A. M.

EIGHTEEN DAY.

Tuesday, May 14.

Attorney General.—If it please the court this is the proper time to read the letters to the jury: I first propose to read this pink letter which has been traced by the testimony of two witnesses from the possession of the prisoner to that of the deceased.

Mr. Randolph.—If it please the court, I object to its being passed to the jury on the principle that all writing admitted as evidence must go to the jury on some proof. Even in civil cases handwriting is not admitted upon less proof than that of a witness who has seen a man write, and surely in a case of life and death, less proof will not be considered sufficient. But the

ordinary proofs required in civil cases will not apply here—*Esplanasse's Rep. v. Rex v. Catur. vol IV p. 142.* The handwriting here is not pretended to be the ordinary handwriting, and therefore, unless it can be proved by some one who actually saw him write it, it cannot go to the jury without some other kind of proof equally strong, [p. 273]—so strong that if there were no other proof in the case it should of itself be sufficient to fix the letter on the prisoner as having been written by him, for surely his delivering the letter, even if we admitted that he had delivered it, would be no proof that he wrote it.—*McNally's Rep Rex v. Naparrend 5, p. 409.*

Hon. Dutee J. Peurce—It is to be regretted that the gentlemen on the other side do not meet us on the distinct ground upon which we propose to give this letter to the jury. We do not offer it as a letter written by the prisoner, whether he did write it or not; but as a letter delivered by him to another person, by a second person to a third, and by the third to the deceased. Suppose it were a letter written in cypher, or hieroglyphic characters—as in the treason case of Burr, where a dunghill fowl was used to designate the President of the United States,—would it be pretended that we had not a right to offer it as a document possibly illustrative of the case which we had traced from the possession of one person to another? Suppose it had been a bundle of clothes, even, given to Caswell by the prisoner to deliver to the deceased, do the counsel mean to say we could not submit that bundle to the jury for their examination? If the prisoner be innocent he can explain the matter, and dispel every shade of mystery in which it is involved. We offer the letter, therefore, independently of any question of handwriting, as a link in the chain of our testimony, and the prisoner will be entitled to the benefit of any doubt which may arise in the minds of the jury respecting it.

The Attorney General followed to the same effect, saying he did not offer the letter as one written by Ephraim K. Avery, but as one which had been traced from his possession to that of the deceased, and which should be admitted if it were merely in reference to the question of suicide.

Hon. J. Mason—If it please the court it is necessary to abide by the rules of evidence in every case; in criminal cases more especially; and, in a case like the present, which has created extraordinary excitement, the necessity is yet more enhanced. The counsel for the government say this is not a question of hand writing; but it is virtually so if they go to the contents of the letter; they assume what they should prove, namely the prisoner's privacy to the contents of the letter. But how can they prove this, the letter having been delivered sealed and no allusion having been made by him to its contents? It was not a letter found in his possession, for all that the testimony goes to prove is, that it was a letter which he delivered sealed. Hundreds of letters are daily delivered in this manner; and how dangerous, therefore, would it be to infer a privacy to the contents of this one, merely from such a fact. No principle could be more dangerous. If Orswell himself were on trial this letter would apply equally to him as to the prisoner.

Attorney General—I admit that it would so apply; and contend that it would justly apply to every case under similar circumstances.

The Court having consulted sometime, the Chief Justice said—The Court has given the question their best consideration, and are of opinion that inasmuch as the letter has been traced directly from the prisoner to the deceased, it is material evidence, and as such, ought to go to the jury. We do not consider that it goes to them as conclusive evidence that the prisoner wrote it or was privy to its contents, for this is a question for their own consideration, and one from which they must draw their own inferences.

The Hon. Dutee J. Pierce then read the pink coloured letter to the jury. It is addressed "Miss Sarah M. Cornell, Fall River, Mass. to be left at Mrs. Cole's." We give it *verbatim et literatim*, as in the original.

Providence Nov. 1831.

Dear Sister—I received your letter in due season and should have answered it before now but I thought I would wait till this opportunity—as I told you I am willing to help you and do for you as circumstances are I should rather you would come to this place viz. Bristol in the stage the 18th of Dec. and stop at the Hotel and stay till 6 in the evening and then go up directly across the main street to the brick building near the stone meeting house where I will meet you and talk with you—when you stop at the tavern either inquire for work or go out to the street in pretence of looking for some or something and I may see you say nothing about me or my family should it storm on the 18th come the 20th if you cannot come and it will be more convenient to meet me at the Methodist meeting house in summerset just over the ferry on either of the above evenings I will meet you there at the same time or if you cannot do either I will come to fall river on one of the above evenings when there will be the least passing I should think before the mills stop work this I leave with you if I come I will come if it does not storm very hard if it does the first ill come the second write me soon and tell me which—when you write direct your letters to *Betsey Hills Bristol* and not as you have to me remember this your last letter I am afraid was broken open

were your calash and not your plain bonnet, you can send your letter by mail.

S. M. C. Yours &c.

B. H.

let me still enjoin the secret keep the letters in your bosom or burn them up.

The Attorney General then proposed to read the white letter, dated Fall River, December the 8th—supposed to have been written in Iram Smith's store. Its admission was opposed on the ground—1st, That there was nothing more than vague suspicion to connect it with prisoner in any way—no evidence that he wrote it, nor, as in the case of the other letter, that he delivered it, or even ever saw it. 2d, That it was improper to let any document, thus without proof that it attached in any way to the prisoner, go to the jury for them to draw a possible inference that it did attach to him.

Its admission was contended for upon the principle that the proof of its connexion with the prisoner differed from that adduced for the admission of the former letter only in kind; it was there personal, here circumstantial; it bears the date of the very day on which, and purports to be written from the very place where the prisoner was seen writing,—and where another half sheet was found so exactly corresponding with it that the scrutiny of a microscope only served to demonstrate their original connexion.

The Counsel argued these and other collateral points at great length, and with some warmth of feeling; and the Court reserved the question until after the dinner recess, when the following letter, which is supposed to have been written in Iram Smith's store, was admitted by the Court in evidence.

Fall River, Dec. 8.

I will be here on the 20th if pleasant at the place named at 6 o'clock if not pleasant the next Monday eve say nothing—

56. The next witness called was **John Boyd**. I reside at Portsmouth, and two or three days after the examination at Bristol, I had a conversation with Mr. Avery as to where he had been on the 20th of December. He said "I crossed over the ferry, went direct up the road and got over the wall near the mill. I cannot exactly say whither it was on this side or a little beyond. I started off in a southwestwardly direction, I think till I came to a brook or rivulet, near which I saw a man with a gun." I think he said he had a conversation with this man, but I am not certain; he gave some description of the man's dress, and said his hat was dented in the front part.—He then said "I passed on and came out between two houses near the ruins; from whence I passed on till I came to a gate painted white, or whitewashed, I went through the gate and pursued a southerly direction till I came to a lot where there were some sheep; and near by this lot I saw a boy." It is my impression that he said he had conversed also with the boy.—Then (said he) I passed on over another brook or rivulet to the westward of Freeborn's house. When I was some way to the southward of it I observed how the time of day went, and saw that the sun was about half an hour high, and I then concluded to go to Sister Wilcox's; I steered in a southeasterly direction, passed a bridge path, and some old rivulets, when I at length came out near the Union Meeting-house." I don't recollect his saying any more about Sister Wilcox's. He mentioned something about shaping his course back to Bristol Ferry. I do not remember any observation he made till he was on the meeting-house hill, when he said he saw some sparks flying out of a building which he took to be William J. Cook's blacksmith's shop; but he did not say what road he took. He did not state that he stopped at any house; nor did he say that he conversed with any one on the road, except the boy, and the man with the gun. I cannot fix the day on which this conversation occurred. The distance from the Bristol Ferry to the Union Meeting-house by the route Mr. Avery described is, to the best of my knowledge, nearly eight miles; but by the travelld road I should not think it is more than six. I went and traced the route he described as far as Freeborn's, and found the marks he described, but I was so well acquainted with the route that I knew them as well before as after. From Oliver Brownell's you can see the gate and all about. I went the route at the request of Mr. Norris, who made it in the presence of Mr. Avery, at his house. No one was present at the conversation I had with Mr. Avery.

57. **Abner Tallman**—On the 20th of December last, I started in a wagon from this town (Newport,) a little after sunset, and went so far as Coggeshals on the east road. I came out on the main road to the Union meeting house, on the south road, and stopped at Richard Sherman's. The distance between the meeting house and Sherman's is 20 or 30 rods. I stayed there about 5 minutes, and then went home. I saw no person between the main road and the meeting house; it was about 8 o'clock P. M. when I passed this road.

Cross-examined—It was about 8 o'clock when I got home.

58. **Abby A. Earle**—I reside at Portsmouth, a short distance from the ferry, between it and the mill. I was at home on the afternoon of the 20th Dec. and saw the ferry boat crossing about 2 o'clock. I was watching the ferry from 12 o'clock till nearly 3 for an opportunity to send a billet across, and I saw neither Mr. Avery nor any other person who may have crossed

during that time pass by our house. I was not absent from the room more than five or ten minutes during that time. I went to Mr. Gifford and remarked to him that I had no chance of sending it. When I left the house I went out of doors to look.

Cross-examined.—The billet I wished to send was directed to Wm. Pearce, and it was of great importance that he should receive it that day, which made me watch so long for an opportunity to send it. I had no time-piere to ascertain the time, but I knew it from the passing of the stage, and from having been informed of it at John Peckham's.

59. **Margaret B. Hamblly.**—I lived at Lawton's hotel, in Fall River, on the 20th Dec. last, and on that evening three gentlemen supped there. One of them supped alone. He had on a surtout coat and cap, and I brought him a glass of brandy from the bar. He was about as tall as the prisoner; he was like the prisoner, and resembled him in every feature. I thought I had seen him before, at New Bedford, and at Fall River in the Methodist meeting house in the pulpit, and although I did not then recollect where I had seen him, I knew he was a minister whom I had seen before.

Cross-examined.—I saw Mr. Avery in the court at Bristol, but I did not know him then, and pointed out another person for him. I did not know him when I afterwards saw him until he was pointed out to me, in this town near the jail. I believe, but I am not sure, that he is the same man I have heard preach at the meeting house in Fall River. He drank the brandy I brought him without any water; it was about half a glass-shill.

60. **Baily Burden.**—I lived at Fall River on the 20th Dec., when Sarah M. Cornell was hung. I was there during the camp meeting on the 20th October; I met a gentleman and a lady between the hours of nine and ten, on my return from Tiverton, he was tall, and wore a cloak; I saw them coming up a street called Spring street, and turn round the corner. He had on a black hat with a broad brim; the couple went on together as far as I could see them.

Cross-examined.—I should judge the time to have been half past nine. When I passed I was very close to them, but took no particular notice.

61. **Mary D. Burden.**—I recollect on Saturday evening, the 20th Oct. I went to my husband's sister's to spend the evening, and on returning with him about half past nine o'clock, I met a couple, a man and woman; she looked up full in my face, and I knew her. She was Sarah M. Cornell; I had known her before, though not intimately; the man was tall, dressed in a broad brimmed hat and a dark cloak. I turned round to look at them, for he was in earnest conversation with her, and I wished to see how far they were going together; but my husband bid me come on.

Cross-examined.—I looked at her earnestly, because I wished to be certain who she was. She had dark hair, black eyes, and rather a dark complexion. I have never seen her since, except when she was dead, but I knew her to be the same.

62. **Lucy Spink.**—I lived at Fall River on the 20th October last, and Mr. Avery preached there on Saturday, at the Camp meeting, in the house in which I lived. Afterwards he came out of the door where I was standing, and saw a rather short young woman near. He spoke to her, as I think, for he stooped over her, as though he was looking at her, and they walked off together into the street, but where they went I don't know. He went out of the house before the rest—he was the first who went out, which made me observe him.

Cross-examined.—I did not hear any conversation between them; I don't know what text Mr. Avery took; nor what time the meeting closed, but I know it was a short meeting, and not expected to be over so soon. I don't recollect the subject of his sermon; but I know he mentioned something about the place where he was born, and that he came from respectable parents. I think he said his native place was about 200 miles hence.

63. **Grindall Rawson.**—I am a tailor, and have lived at Woodstock one year and a half; my wife was the sister of Sarah Maria Cornell. The latter came to my house on the first of June last on a visit, and a few weeks afterwards she worked at the tailoring business. I saw her at the Thompson camp meeting. I sent my apprentice, B. F. Saunders, to bring her home. I saw her at various places with her sister, viz: at the Muddy Brook tent, and at the preaching stand. She went to the meeting with Mr. Paine, because I could not find a conveyance for her as I expected. Mr. Cornell, our minister, had offered to take her and bring her back, but I thought this uncertain, and meeting Mr. Paine, he said he thought he could take her, if I wished. Before she left us, she told my wife and me the situation she feared she was in, for she said she knew what had taken place. She told us this, a few days before I left Woodstock.

Cross-examined. I spoke to Mr. Cornell, the Minister of the Presbyterian Church at Woodstock, for his advice, for I

felt it my duty, if that was her situation, to do something for her; but he could not advise me, and I consulted Mr. McLeish, the Lawyer, who advised that she should be removed to Rhode Island, because the laws of that state were more favorable to a female in her situation than the laws of Massachusetts.

She stated to Mrs. Rawson and myself that one day during the camp meeting on the ground, Mr. Avery came up to her and addressing her, said "I should like to see you Maria, and talk with you, and said I will meet you this evening, when the horn blows for preaching." But when we came to the house, he said, "there is no room for us there, and we cannot have any talk there, go on further;" and he afterwards met her by coming another way, and after they had got into the woods, he asked her to take her glasses off, which she did; and after going further, to sit down, which she did. She then said she asked him whether he had burned those letters. He said "No, but there is one condition on which I will burn them, and settle the difficulty." That he then took hold of her hand, and placed his in her bosom; she said she tried to get from him, but could not; that he then had a connexion with her, and on their way back to the camp ground, he told her he would burn the letters he had in Bristol. This she said was on Thursday. I don't know what day of the month this was, but I think the meeting commenced on the 29th of August. I never knew Mr. Paine to come to my shop except on business, and don't know that he was more acquainted with her than any other customer. I don't recollect that she said she had seen Mr. Avery after she came to my house until she saw him at the camp meeting. I have known her about eleven years. I believe she came from Thompson's Providence. She was a tall dress, and served her time at Norwich. I never paid my addresses to her, nor promised to marry her; I never thought of it, for I was engaged to her sister, my present wife. We always called her Maria, but her mother said her name was Sarah (or Sally) Maria. I have no distinct recollection that I said any thing to Mr. Boyd about Maria. Mr. Boyd has told me that I said she is a poor unfortunate girl, speaking compassionately of her; but I have no recollection that I did say so, though I talked with him on other subjects. I never knew that she ever attempted suicide, or had any disposition to do so.

Direct resumed: I have heard her speak of Mr. Avery after the camp meeting, but not even then with decided reproach, for she seemed to have a respect for him.

We received a letter from her after she left Woodstock, and this one (produced) is the same. It relates to the subject of our conversation with her, and we received another letter from her on the subject. She made her first statement to us with apparent reluctance—I first heard it from my wife, who awoke me and said Maria had got into trouble; we afterwards all three conversed upon the subject together, and she directly said that her intercourse had been with Mr. Avery. I never knew her to have any man whilst she was in my house. I declare upon my oath that she never had a connexion with me. I cannot tell the time nor the day of the week when these communications were first made.

64. **Benjamin F. Saunders.**—I was an apprentice of the last witness, knew Sarah M. Cornell, saw her at the camp meeting, and brought her home. I was sent for her by Mr. Rawson, I was at the meeting about an hour; she was by the stand when I came. I knew her to have written letters prior to the Thompson camp meeting, and that two of them were directed to Bristol. I never had myself, nor ever knew any other person to have an illicit intercourse with the deceased.

65. **Nancy Bidwell.**—Is the wife of Rev. Mr. Bidwell of Fall River. On the Saturday night of the camp meeting Mr. Avery slept at our house—he came in about half past nine, which is rather later than it is usual for ministers to return. I went to Mr. Green's and asked him if he had seen Mr. Avery; he said he had last seen him going up the street. When Mr. Avery came in he said he had been up to Mr. Warren's stable, which made him so late; it was from him I learned the time, for he looked at his watch and said it was half past nine o'clock.

Cross-examined.—Warren's stable was in an opposite direction to the place of meeting from our house. Mr. Green said he thought it likely some one had invited Mr. Avery home. The night was cloudy.

66. **Sarah M. Jones.**—I resided at Portsmouth on 20th December last. I saw a stranger on the forenoon of that day pass our house who was like Mr. Avery. I had some conversation with him in his house at Bristol, on the subject; he asked me about the appearance of the man, and the direction he took. He told me not to repeat in court that he had inquired of me; but to keep it quite secret.

Mr. Bidlock was present at this conversation, and marked out the road I described on the floor, with chalk; and afterwards in the entry he said Mr. Avery's life was worth thousands of worlds and depended on the testimony he could produce.

Cross-examined.—Mrs. Avery and a young lady were present at the former conversation. The stranger that I saw passed through the gate whilst my father was at the mill with grist, which I believe was between 11 and 12 o'clock. Mr. Bullock chalked out the road I mentioned on the kitchen floor. Mr. Bullock did not stay to tea at Mr. Avery's; there were only himself, his wife, myself, the young woman, and the children there. I was summoned here as a witness for Mr. Avery; I have changed my boarding-house in consequence of some

Methodist persons there having as much as said that I had sworn false at the last examination. In appearing here for the prosecution, I have acted voluntarily; I have not been spoken to by any person whatever to depose on this side; but the Methodist people had been asking me why I could not say I saw the stranger pass through the gate in the afternoon, and as certain he did as in the forenoon, which I could not.

Adjourned to Wednesday.

WINTER DAY.

Wednesday, May 15.

67. **Philip R. Bennet.**—I reside at Fall River. On Monday last, I walked from Mr. John Durfee's stack yard to the Bristol Ferry, in order to ascertain in how short a time the distance could be conveniently passed on foot. I started at 16 minutes past one, and arrived at Mr. Gilford's at 15 minutes before three, being one hour and twenty-nine minutes. I carried my watch with me. Benjamin Manchester walked with me; the wind blew pretty strongly ahead from the south, indeed it blew very fresh; some parts of the distance where the land lay on a descent we trotted, but I did not at all fatigue myself. We followed the road until we got over the ferry neck, then passed into the fields, and came out at the barns, just south of Gilford's house. Not knowing one way across the fields, we did not follow the nearest tract, but got a little out of our way into a boggy place. On Saturday evenings the bells at Fall River ring earlier than on other evenings; in the month of December they usually ring at a quarter before eight. No bell rings at nine; the factory bell strikes nine.

Cross-examined at immense length, upon the number of different tones and times of ringing the various factory and meeting house bells at Fall River, but without any apparent object or result. Witness then proceeded to say—my motive in starting from the stack yard to Fall River, was to ascertain how long it would take to walk the distance, because a dispute had arisen on the point in reference to this trial. Somebody said "Expenditure docket"; I said so too, and was then asked if I would go. Cook first proposed to go with me, and afterwards Benjamin Manchester, but he could not conveniently that afternoon. Dr. Hooper afterwards wished us to go, and said he would get a purse made up to remunerate us for our trouble.—It was proposed that we should go as quick as we could, but I would not consent to it, but said I would walk it comfortably.—The consideration of a reward had no effect, for I felt an interest in common with others to ascertain the fact in question.—I was not much fatigued though we trotted perhaps half the way, and I took off my coat to make myself comfortable. There was about three dollars given to us, and I had half. Dr. Hooper asked me if I could have come sooner if the weather had been favorable, and I said I could.

68. **George Duval.**—I live at Fall River and did so in Oct. last. Mr. Spink lives on the same block. Elder Avery preached at my house on the evening of the 20th of that month, which was the last evening of the four-days Fall River meeting. I understood it was Elder Avery who preached, but I never heard him preach before, and I am not certain whether it was he.

Cross-examined.—I do not know at what time the meeting began, but it ended between eight and nine, perhaps earlier. I am not certain whether he preached or "improved," for I do not recollect whether he took a text or not. By "improved" I mean exhorted, expounded.

Gerardus Rawson, (No. 63) recalled.—I know the handwriting of Sarah Maria Cornell, the deceased; this note in pencil [produced] I believe to be in her hand-writing, but I can not say positively.

Cross-examined.—I think I saw her write during her stay at my house last summer, but I will not say it was with a pen.—I correct myself, I did see her write with a pen on some measures in my shop; she wrote the words "waist" and "breast" upon some of the measures. I have several other times seen her with pen and paper, when I supposed she was writing. The words I have mentioned were written on cartridge paper, of which the measures were made, on which I had been teaching her the rules of cutting. I have no recollection that I ever saw her write with a pencil. These two words, together with the writing in letters which I have received from her; and her writing in my account books, enable me to know her hand. She has directed letters to me, as to her other friends; and I have replied to them. I think I wrote one letter to her, directed to Lowell. This was, I think, five or six years ago, but whether I received an answer I do not recollect.

Q. Did you ever become bound for Sarah Maria Cornell who she was under a charge of theft.

Ans. No, I never did. I have received a number of letters from her directed to me on the outside, but inside to my wife her sister, or to her family in general. There was one which she

wrote to me from Fall River, and one or two at least from Taunton.

Chief Justice.—Do you say under oath, that you believe that slip of paper to be in her hand-writing.

Ans. I do.

Attorney General.—If it please the Court, I propose that this pencil writing, together with a letter found in the possession of the deceased, which is post marked "Warren, R. I." and addressed to "Miss Sarah Maria Cornell, Fall River, Mass." be now read to the jury; the letter is the one on yellow paper, and bears date the 13th November, 1832.

Mr. Randolph and the Hon. J. Mason objected, and after an argument in which the counsel were heard respectively at considerable length, the Court decided that the letter did not come within the principle upon which the other letters had been admitted, and therefore ruled it out. The slip of paper, however, the handwriting of which had been proved to be that of the deceased, was further evidence as to the state of her mind, and might therefore go to the jury for this purpose; but it could not go to them as evidence upon the question of murder so far as that question involved any act of the prisoner at the bar.

The slip of paper was then read; it was the paper found in the bandbox of the deceased, written in pencil, and near the pencil with which it had probably been written.

"If I am missing inquire of Rev. Mr. Avery Bristol, he will know where I am gone."

Dec. 20th.

S. M. CORNELL.

Hon. J. Mason.—If the Court please, I wish to distinctly understand from your Honors, whether the letters which are gone to the jury, are to be used and commented on merely as evidence to rebut the suspicion of suicide, and not to implicate any act on the part of the prisoner?

Chief Justice.—There is one of them which goes as evidence beyond this, and may therefore be used accordingly; for the letter which the prisoner delivered to Oswell the engineer, connects him with the deceased, by an act of his own.

Attorney General.—I mean in the close, to put that letter to the jury as one proved to have been in his hands, by him delivered to another person, for delivery to the deceased; and then to submit to them the natural inference that he was acquainted with its contents; and thus I shall be fully authorised to do, unless he shall prove that he did not know them at the time.

Chief Justice.—I so stated to the jury, and I said that the other letters would go to them only as evidence to repel the suspicion of suicide.

Attorney General.—But if it please the Court, I shall claim the right to offer the other letters as evidence beyond the mere question of suicide, so far as any proof has been adduced to connect them with the prisoner in any other way.

Chief Justice.—So far as there is any evidence to show that the prisoner is connected with the other letters, we are of opinion the Attorney General cannot be prevented from commenting upon them.—Recess 'till 3 o'clock, P. M.

69. **Rufus H. Lesure.**—I now reside in Providence; in November and December last, I resided at Fall River, and was clerk in the Postoffice there. I know the Postoffice book [produced.] This entry on the 12th November is in my handwriting. There was but one letter mailed from Fall River to Bristol on that day. The entry on the 19th November is in Mr. Darling's (No. 3) hand-writing. I was in the office in the month of December, and delivered to Sarah Maria Cornell a letter with one cent postage on it. I never delivered to her but one letter.—I am not positive who the person was that dropped it in, but it was dropped in by a man who was called Mr. Avery. The prisoner appears to be the same person, though he is now somewhat altered. I am quite sure I saw the man who is generally called Mr. Avery; he did not come into the office, but I was in it when he passed along by the box and dropped it in; this was between 9 and 10 o'clock in the morning. I believe he is the same man; he had before been pointed out to me as Mr. Avery, and I recognised the person who put in the letter to be him. Sarah Maria Cornell frequently called for letters, and expressed great anxiety to receive one, which she sometimes did. I don't know to whom the letter mailed the 12th November was addressed. I don't remember to have ever heard Mr. Avery preach.

Cross-examined.—Mr. Avery was first pointed out to me during the last summer; I frequently saw him with the Rev. Mr. Bidwell and Mr. Bartlett, the stage driver (No. 49).—I saw him and knew him before the month of November; he used frequently to go up to the stables opposite the office and stand conversing, and I had seen him pass the office four or five times before November, so that his countenance was quite familiar to me. I have resided in Fall River three or four years, and have been connected with the Postoffice two or three. I continued there until sometime in January last. In the months of October and November the Postmaster was sick six or eight weeks; I had the charge of the office during that time, and was there every day. I had known Sarah Maria Cornell three or four weeks, or more or less; I had seen her more than twice or thrice at the office for letters. I can't say Mr. Avery put that identical letter into the box; but I saw him pass and drop one in, and I believe it was the same afternoon that I gave the deceased her letter. I believe there was no other letter in the box at the time I took this one out, and it was delivered to Sarah Maria Cornell. I don't more particularly recollect the dress of the person who put the letter in than that his clothes were of a dark color, and had on a black hat with

rather a broad brim. I heard the letter fall in and took it out immediately. I was at the Bristol Examination a part of a day, but not as a witness. I first mentioned these facts to-day to Mr. Staples since the adjournment of the Court; that is, I have not mentioned them particularly. I took no pains to conceal them, for I was not aware they were of importance to the case. I don't remember to have been asked about them except by the Postmaster, to whom I stated I had delivered letters to Sarah Maria Cornell, and had seen Mr. Avery put one in the box which I supposed I had delivered to her the same afternoon. I did not answer him more particularly because I was not positive, and was not aware that the letters could be traced. I used generally to take out the letters as they came in, or look at them. I am quite certain I saw the person known by the name of Mr. Avery put something into the box.

Abner Talbot, (No. 57) returned to correct a trifling mistake about the situation of a house, occasioned by an indistinct comprehension of a question respecting the relative location of two roads.

The Counsel for the Government here rested their case, until the period for the introduction of rebutting testimony, and Mr. Randolph opened

THE DEFENCE.

Mr. Randolph:—If it please the Court—Gentlemen of the Jury:

Never in the course of my life have I risen in a Court of Justice under feelings so deeply painful as those by which I am at this moment oppressed. It shall be my most studious endeavor to avoid any exhibition of those feelings; and if it be my misfortune that I cannot control myself so far as altogether to hide their existence, believe me when I say, it is not my object to influence your minds by any such indirect appeals. My intention is to address myself alone to your understandings; your feelings I would leave to their own operation. There is too much matter of higher importance requiring my attention to admit of further allusion to myself. Yet suffer me, Gentlemen, before I enter on the heavy duty still before me, to say a few words to you on the subject of the situation in which you appear. Never were men placed in circumstances where they were more liable to do wrong, even with the most honest intention to do right. With the advice of our client, we have selected you from a great number of Jurors, believing that you, at least, would deal uprightly with us—that you would wipe out from your hearts every unfavorable impression which had fixed itself there; and that you would give to the prisoner, whose life is in your hands, such a fair and impartial trial as he himself has a right to claim, and as the just and merciful laws of his country pronounce him entitled to.—So much has been written, and said, and published respecting this trial, that it is scarcely possible to find an individual whose feelings are entirely uncolored, or whose minds are entirely unbiassed. To ask you to forget all that you have heard or read, would perhaps be asking more than human nature is capable of performing. I shall be fully satisfied if you honestly endeavor to do that which is right—to divest yourself of every prejudice which can influence your verdict—and to pronounce that verdict according to the solemn oaths that you have taken, to the law of the land, and to the facts as they shall come before you. The first point which we make in our defence is, that no fact has yet been testified to, which can show that the death of Sarah Maria Cornell was not occasioned by Suicide. Before I draw your attention to our own testimony, I would make a few remarks on that which has been produced by the Government. I do not intend to go minutely into it now; at the present time it would be impossible to detail all the facts connected with so vast a mass of testimony. [The learned Counsel, after submitting, and quoting authorities to shew, that the first step to be established by the Government was that a murder had been committed, commented at considerable length on the evidence brought forth for that purpose, and on its entire inefficiency to answer it. As we propose to give the concluding arguments on both sides, we proceed to the Counsel's summary of testimony for the Defence.]

I shall now state briefly the facts which we purpose to prove in relation to the unfortunate girl whose death has given birth to this trial. Her guilt and her sorrows are now at an end, and whatever she may have been in life, she must now be an object of pity to all of us. She was once a member of the Church of Eph. K. Avery, at Lowell; whence, after having been tried and convicted on accusations of lying and fornication, she was expelled. We shall prove that, under the hope of forgiveness, she made confession of her conduct in relation to both charges to Mr. Avery and others—and that her character being so well known, and her confession having been therefore refused, she avowed her intention of revenging herself on Mr. Avery. We will prove that at the very time of this expulsion from the Church, and when Mr. Avery was only doing his duty in bringing her to

trial, she was afflicted to a great degree with the venereal disease, and that whilst in full communion as a member of the Church and in constant attendance at prayer meetings, she was in the habit of passing at once from the house of prayer to the Doctor's shop to receive medical advice and appliances for this most loathsome disorder. We will show that on various occasions she threatened to commit suicide, and that she did actually attempt it—and that from her strange conduct and conversation, the appearance of her eyes, and from other circumstances, she was generally considered to be deranged. We will lay before you the history of the girl's lewdness and misconduct for fourteen years. We will satisfy you, that such was her character, and that Mr. Avery knew it to be such—when you are thus made acquainted with her real disposition—when it is proved before you that she was five times expelled from the Methodist Church, and that she was all the time contriving to be re-admitted by means of false certificates and her own forgeries; when you see all these things strongly before you—her character, her vindictive feeling, her threats against, and personal enmity to Mr. Avery, I ask you, Gentlemen, whether you will not unanimously say that, of all human beings, the deceased was most likely to close her career by such an act. There is a thought, and it has been expressed, that a creature of a character so depraved would not care about the disgrace of bearing a child. But if we satisfy you that she was at one time pious and at another abandoned and vicious, and that no reliance could be placed on her temper or feelings even for an hour, you will at once perceive how weak and untenable such an argument must be.

We will next prove to you, gentlemen, by the testimony of experienced Physicians, men of whose opinion the greatest dependence can be placed, that the fetus would not arrive at the length of eight inches until the period of five months, at least, had elapsed, and probably not then, especially in a woman of this fixed description. I think we shall satisfy you that the children of women of bad fame, of deceased women, and of those who indulge in promiscuous intercourse are smaller than the children of other women; that the deceased at the period of her death must have been pregnant five months, or more, and that the women at the Thompson Camp Meeting remarked her pregnancy then. If these facts come before you, you will, I doubt not, at once decide that Mr. Avery could not have been the father of this child. We shall then prove the utter impossibility of Mr. Avery having had connection with her on the evening deposed to by her brother-in-law. (No. 61.) We shall prove that he was at one of the tents at night, that he was in the congregation till the horn blew, that he slept with Mr. Crandall, and that he went down to Providence the following morning. We shall prove where he was almost during the whole Camp Meeting. I have heard the Counsel for the Government enquire from some of the witnesses whether they belonged to the Methodist Society; as if such an attachment could make the testimony stronger or weaker. I am sure you will not believe that all these respectable individuals have come into this Court to testify to that which is not true, or to assist in conceding a crime of so black a cast as that with which the prisoner at the bar stands accused. It has been intimated that there have been Sectarian prejudices at work to influence the issue of this trial. I will not believe it; and you are bound to give equal credit to the testimony of every honest man, to whatever sect he may belong, or whatever his religious principles or tenets may be. On our parts we make no charge of Sectarian persecution; we say only that the pub-

licit mind has been misdirected, and that infatuation has such been produced by the publication of truth and falsehood, that no person has been enabled to reason deliberately, or to arrive at the honest truth of this transaction. We will satisfy you that for twelve years the prisoner has been a zealous and faithful Minister of the Gospel—that he has moved from place to place as is customary with the Ministry of this Church—that wherever he has bent his footsteps he has borne with him a character most unimpeachable and unsullied, and that he has no tendency to vices of this description. If I succeed in showing his character to be such as I represent, surely in a case as awful as the present, it ought to be some protection to him.—You will not so readily believe that such a man can be guilty of wickedness so complicated and dreadful. He stands before you charged with seduction, with using his holy office merely as a covering for actions the most corrupt, and lastly with the crime of murder. Bar, Gentlemen, if I prove him to be such a man, and her such a woman as I have represented, the very existence of this vast contrast in their characters, added to the fact that he was aware of it, would be sufficient to make any reasonable man doubt the possibility of his having held any connection with such a wretch.

One letter has been introduced said to have been delivered to the Engineer at Providence (No. 19) between the hours of 8 and 9 in the morning. We will produce the stage driver who carried Mr. Avery to Providence on the Monday of the four-days meeting, and who set him down at Mr. Jilson's. We will show that he remained there till sun-rise, and then went to the sun-rise meeting—that he was present during that meeting, and remained till it broke up after 8 o'clock—that he was back again at Jilson's about a quarter past 8, & remained there about half an hour. We will then prove that he was at Mr. Fuller's, where he remained till almost the hour of nine, that he was in the meeting house at nine, that during the whole of his sojourn at Providence he was in the presence of some most respectable men, and that he could not therefore have been the man who delivered that letter—and we will thus lay the foundation to show that the prisoner could not have been the author of any of the letters which have been here produced—we will shew you that this very person has declared he could not positively say that the prisoner did deliver that letter to him—we will also shew you that Cranston, who has been called to testify that the prisoner passed the Howland's Ferry Bridge on the 20th of December, did not at Bristol declare that he was the man—and that previous to the Bristol examination he told a person named Duval that he had twice seen Avery pass the bridge, and that it was not Avery who crossed on the day alluded to. What reliance, Gentlemen of the Jury, is to be placed on testimony of this description in a matter of life and death? When you perceive such men partaking of the raging fever which has spread itself over the entire District of Fall River, will you not be alarmed at the very idea of judging a man on such depositions? Have you not traced that fever?—have you not seen its evil effects on the witnesses who have been brought before you? Have you not heard the contradictions which some of them have uttered, and marked the manifest and irrepressible feeling under which some of them have testified? [The learned counsel here made some further allusions to individual testimony as given by Miss Hambley No. 57, and Miss Norton No. 30 and proceeded.] I believe I shall be able to satisfy you that their testimony has been picked out, not perhaps for the express purpose of perjury, but because the good people of Fall River have taken into their heads a belief that a murder has been committed by a Minister of the Gospel, and that he ought to be promptly, and in any event, punished for the crime. I shall shew you as plainly as any mathematical problem can demonstrate, the feeling under which many of these people have come into this Court. Their object is to satisfy the community in which they live, and they are weak enough to believe that community is desirous of seeing the prisoner hanged. Gentlemen of the Jury, suspicious circumstances and willing witnesses will hang any man. If you pronounce this individual guilty, and he shall suffer the tremendous punishment which such a verdict must impose, the time may come when some future generation will be as much ashamed of such an act on your part, as the people of Salem are now ashamed and sorry for that deep infatuation by whose blinding influence their forefathers were spell-bound, when they condemned to death the miserable beings whom they imagined to be witches.

The delusion, though not prevailing to the same degree, is of a character precisely similar. I is the mistaken zeal of a whole community which has resolved that a murder has been committed, and every member of which is now putting a shoulder to the wheel in order to fix it on this individual. In many of these transactions the finger of Doctor Hooper is clearly discernible. I do not believe that he has testified falsely, but under a false judgment. It is this judgment on which you are to rely. Is it safe that a man's life is to be taken from him on

such a judgment, or under such circumstances? He, however, is a young and inexperienced man. Had he been older or more experienced, he would not have ventured to present himself here and depose to facts so rashly as he has done. To the opinions which these two medical gentlemen have promulgated, and the judgment which they have so confidently given, are to be attributed all the trouble and excitement which have since arisen. I trust that the gentlemen hear me when I speak, and when I express a hope that this trial may furnish to them a serious and lasting lesson, which shall exercise a beneficial influence on their conduct for the remainder of their lives.

I shall now touch lightly on the evidence which we expect to produce as to the actual movements of Mr. Avery at the time of this transaction. We agree that he crossed the ferry, & say that he went to the coal mines—that he passed by them—that near Freeborn's house he saw a man with a gun, and a boy—and that after going some distance down the island he came out into the main road near the Union Meeting House. Unfortunately for the prisoner, every effort to trace out the man and the boy have been unavailing. Be that as it may, the prisoner is not here to prove his innocence; it is for the Government to prove his guilt. We shall show you that the testimony of Sarah M. Jones (No. 64) as to the conversation with Mr. Avery, is not to be relied on, and that she has given different versions of it. In the testimony of this witness you have another proof of the fearless prevalence of that fever to which I have alluded. It is more infectious than the cholera, and far more sweeping in its effects.

We will then show you that Oliver Brownell saw a stranger, lower down on the hill at a distance of three quarters of a mile pass by the gate, and that the stranger's appearance resembled in every way that of Mr. Avery.

The Court adjourned.

Thursday, the 16th May.

Mr. Randolph continued. There are two other subjects to which I would advert, without entering into the testimony which has been adduced, excepting so far as to make you understand its applicability. (The learned Counsel here commented on the testimony of William Hamilton, (No. 17,) and Eleanor Owen (No. 19,) pointing out the variation in the time at which screams were sworn to have been heard by these respective individuals, comparing the time stated by both with the testimony of other witnesses, and drawing therefrom the conclusion that if these two persons had testified the truth, which there was no reason to doubt, the prisoner could not by any probability be implicated in the transaction. He proceeded.)

The next point against us is that Mr. Avery escaped, hid himself, and suffered his beard and whiskers to grow; and this concealment is to be brought in as an evidence of his guilt. I admit that flight in many cases, furnishes a presumption of guilt; but the justice of that presumption must depend on circumstances. There are many instances presented to us in the books, of the flight of innocent persons; but we need not resort to such a course of reasoning, for we have facts to support us. On the Saturday after this supposed murder Mr. Avery was informed that a suspicion of its perpetration rested upon him.—He remained in Bristol in the discharge of his clerical duties on the Sabbath, and on Sunday Evening John Durfee went over to Bristol and he was arrested. If he had intended to evade pursuit, if he had apprehended that there was danger of his conviction, if he had been sensible of guilt, then was his time to fly. But he resorted to no such measures; he stood his ground; and after undergoing a long and patient examination was discharged by two as correct and intelligent men as ever discharged the Magisterial duties in the State of Rhode Island.—They need no eulogy from me. He was discharged on Monday; remained in Bristol the whole of that day and of Tuesday, and on Wednesday he went to Boston. I will prove to you that threats were uttered against him—that personal violence was hourly anticipated—that he slept out of his house, in consequence of the advice of his friends; and he departed from Bristol, contrary to his own inclination, and in deference only to the advice of those friends, who were alarmed for his safety, till the Court should meet in March, when he might return and take his trial. We will prove that he was preparing himself for that trial, and that his return for that purpose was fully contemplated and fixed upon. If I satisfy you of these facts, if I prove to you that he fled on the solicitation of his friends, not from a sense of his own guilt, not from the sting of his own conscience, but from a persecuting spirit, from the ragings of the fever, and the violence of an excited mob, you will then be enabled to form a just conception of the measure of that importance which ought to attach itself to the course he has adopted.

I believe, Gentlemen, I have now passed through the main points of our testimony; not indeed minutely, though sufficiently so far the purposes of an opening. I will now read some authorities connected with the subject of the medical examina-

tion. (The counsel here read a number of passages from Ryan's Medical Jurisprudence, and Beck's do. to shew the difficulty of deciding between Suicide and Homicide in cases of suspension, and the extreme caution that should be used. by Physi-

ans in forming their judgments in all cases of this description. The gentleman illustrated his positions by the very critical and important case of John Stringer, as reported in Phillips Ev: p: 104).

TENTH DAY.

Thursday, May 16.

1. *Dr. Nathaniel Miller.*—I reside at Franklin, Massachusetts. I have been a practitioner of medicine nearly forty years. [A difficulty here arose with respect to the method in which this witness should arrange his testimony. He was about to proceed with a recapitulation of Dr. Hooper's testimony (No. 6 of the prosecution) with a view to give his opinion upon its points in detail; but the Court objected to this method of giving testimony as unusual and improper, and directed that the opinions of the witness should be passed, not on the testimony of others, but on the questions submitted to him by the counsel concerning facts or opinions embodied in that testimony.] In my opinion women are not good judges of the causes from which such marks of supposed violence as those said to have been found on the body of the deceased may have proceeded, although these women may be perfectly competent to describe the marks themselves. The change which takes place in the body after death is very great. Persons of both sexes, whether they die by hanging or not, most commonly exhibit after death dark appearances about the private parts. The lower part of the abdomen becomes discolored first. Simple discoloration in these parts is not of itself conclusive of violence inflicted before death; these appearances always take place sooner or later after death and are technically termed suffilation. Violence on the abdomen and on harder parts would not present much difference in appearance, though it would not produce the same result in both cases. It would require much harder force to produce ecchymosis on the abdomen, than on a harder part. Ecchymosis is the black and blue spot round a vessel which has been ruptured. In a person who had been suspended by the neck from 12 to 15 hours, I should expect to find the region of the abdomen darker than if it had been laid horizontally; the part situated lowest becomes discolored first from the subsidence of the blood by the general law of fluids. The extent of the discoloration would be in proportion to the degree of violence that produced it. The cellular membrane is spongy and vascular at the groins, and these parts will therefore naturally become dark sooner than others. At a period of thirty days after death, it would not be easy to settle the difference between ecchymosis and suffilation; you cannot place much reliance upon such an examination, and it would be dangerous to give a decided opinion upon such data as it could afford. It must be viewed in connexion with other circumstances. These parts are the first to decay, and after thirty-six days they must be decayed more or less. Even where there is blood it is often difficult to determine where it comes from. In cases of fracture of the skull, or where an instrument has been passed through the body we might rely upon such an examination very confidently; but not so when the softer parts of the body are supposed to have been injured. If a severe blow had been inflicted on the abdomen during life, any consequent injury would appear as much in the interior as on the exterior, and would be apparent as soon. The pressure of a cart wheel passing over it would leave but little exterior mark. But it would not necessarily follow that an injury on the abdomen would be developed more within than without; for this again would depend on circumstances. If a person were grabbed thus [compressing the abdomen with his grasp] there would be no appearance of indentation inside. If compressions of this kind are made after death their impressions on the surface will remain, but if before they will immediately disappear. Clothes pressing a dead body will leave impressions of any folds or irregularities that may have borne against it.—The spots which appear after death are very irregularly shaped; they appear ragged at the edges, shooting out with lighter spots intervening. A fetus, I should think, in ordinary cases, would reach the length of eight inches at the period of five months or more after impregnation: at three months, its length would be from three to three and a half inches; at three months and twenty days, from three and a half to four inches; but not I should think, exceeding four. At one month, a fetus would be a mere speck; and at two months, not larger than an ant. At four months, its length would be from five to five and a half inches; at five months, from seven inches to eight; but eight inches would be long for a fetus at this period. Some authorities go farther, and others not so far; Beckard goes the farthest: but the lengths I have stated seem to be the average of the different authorities, and correspond best with my own experience. It is my opinion that a fetus of eight inches at the period of three months would be out of the

ordinary course of experience. I cannot tell what authors say on this subject in reference to the fetuses of women of vicious habits, prostitutes, and such as have been afflicted with the venereal disease; nor can I speak from experience. It is not altogether uncommon for women to have a discharge after pregnancy of a description not easily distinguished by themselves from the one usual before that state. They sometimes have a coagulum, but this is of a different shew, and is not menstruation. Menstruation after pregnancy is not common, but we have occasionally a case of this kind. From authorities, and my own experience, I should say that impregnation may be ascertained to a certainty within three or four months after its occurrence. If a person was strangled & afterwards hung up, I apprehend that two distinct circles or indentations would be found in the skin, unless the cord were so tightly drawn as not to slip by the weight of the body; but even in this case the skin would be drawn up towards the chin, and if I dissected the parts I should expect to find a mark on the muscles below the cord, although the prior strangulation might not make so great an impression upon them as the subsequent suspension. If the cord were very small and tight it would not be apt to slip over the skin on suspension, but the skin would go up with it, and when relaxed would become more horizontal. If in a case in which the skin was thus drawn up I found on dissection, no indentation on the muscles beneath, I should conclude the cord had been placed exactly where it was found.—I have seen only two persons who have been hanged; but I have learned from practical men that the faces of persons who have died from this cause are not very dark, nor very florid. There might be that dark appearance, and it might disappear by gravitation after the body had been hanging all night. I should suppose there would be no swelling round the cord when it had been drawn so tight as it was in this case, or where a small cord had been used; at least I don't know that it could be perceived by the eye; where a large cord had been used I should expect to find a swelling. On an examination thirty-six days after death, the fact of the uterus being open would not to my mind, be a satisfactory proof of an attempted abortion. I should think that the mouth of the uterus, which is hard like a tendon, would be the last organ to go into decay. A skilful person would not wound the mouth of the uterus, small as it is, in attempting to produce abortion. It would not be safe to rely on an examination made 36 days after death, unless there were stabs or other things to be noticed, for the reason that after so long a time, all the pendant parts would become discoloured. I know but little of the test of washing, but I should not differ much in this respect from Dr. Hooper; a gangrene will not wash out, but after death a bruise will—though I should place but little reliance on this test 36 days after death. Neither ecchymosis nor suffilation can be discovered with certainty, unless on a medical examination at the time of the death. The mouth of the womb might be open by relaxation 36 days after death. I do not know that the opening of the uterus would open its mouth in this case; bruises might be expected. By hanging, strength and sensation are lost instantaneously.—Any indentation made at the time of death would continue, and there would be no ecchymosis.

Cross-examined.—In judging of the correctness of an examination 36 days after death, the state of the body in regard to the progress of decay should be taken into view; nothing else would vary the results of examinations after one, and after 36 days. My impression is that the test of washing relates to decay before death. I should think cadaverous lividity on the muscles would wash out. A fetus would be longer than its skeleton. I have read of cases in which the fetus at 3 months and 20 days has measured 8 inches. It varies, I should think, in different women. The size of the fetus cannot be relied on to indicate its age within a month. Cessation of the menstrual discharge is the first symptom of pregnancy, and is to be relied on ordinarily in judging of the time of impregnation. Menstruation occurs during pregnancy both in sick and healthy females, but it is a case of rare occurrence. It is arbitrary and uncertain and does not last so long; but differs less in appearance than in quantity. It is uncertain whether it would continue through pregnancy or not. Impregnation is more likely to occur within the first week or fortnight after menstruation than at a later period in the month; and women who are regular in the latter are more likely to ascertain the date of the former than those who are not. The age of a fetus is reckoned from

conception to birth, and not to the time it may have ceased to average length as given by authors including Beclard, is enlarged before birth. If a woman were powerless or passive, an attempt to produce abortion by violent means would be likely to exhaust her, and interrupt the functions of life; it would produce the same effect as a violent blow. No person with a cord round the neck, indented three eighths of an inch could fasten the cord to the stake. In hanging, the cord would not be horizontal. The position of the line would change as the head might be carried backward or forward. If the deceased had been hung with a common knot the indentation would have been deeper on the side opposite the stake than on the other. I should think four inches of cord from the stake to the neck would have been very short for a person to have left in hanging himself. If there had been room enough for her to have put her arms out and afterwards have replaced them. There could have been no consciousness after the string had been drawn so tight as to produce an indentation three eighths of an inch deep; and this would cause death without hanging. I should not think there would be any slipping in the knot, whether the line were put on by herself or by any other person; in this respect there would, perhaps, have been no difference.

[Recess till 3 P. M.]

Cross-examination resumed.—Extravasated blood in the coats of muscles which presented no appearance of decay, would lead me very strongly to conclude that they had suffered violence before death, but when the body in which they appear has been dead a long time there is sometimes a difficulty in forming an opinion. I have not had much experience in this matter, nor have I consulted authors upon the subject.

I should not suppose it possible that the deceased could have smoothed back her clothes, under her knees, in the manner in which they are deposited to have been found, if the string had been then drawn round her neck, and the hands could not have been thus applied if they were within her cloak.

By Mr. Mason.—I should think an inch and half of cord from the knot, at each end would have been enough for her to draw it so tight as to strangle herself, provided it had been before fastened to the stake. **By the Attorney General.**—But in this case, if the cord was no longer than had been deposited, her neck, before she strained the cord, must have touched the stake.

By Mr. Mason.—A body after such an examination as this one received, would probably decay sooner than it would otherwise have done; but I have not made many observations on bodies under these circumstances. I should suppose that the earth five feet deep would not be much colder in the month of December than in the summer.

By the Attorney General.—Dissection in the summer atmosphere would occasion more rapid decay than in the winter. The actual observation of respectable professional men on a particular body, should, I think, be regarded as much as the statements of others in books upon cases to which they refer.

By Mr. Randolph.—But the testimony of no physician would lead me to believe that a body could remain in the same state 36 days after interment.

2. Dr. Usher Parsons.—I reside at Providence, and have lectured on Obstetrics in that city and Philadelphia. I have not been accustomed to the examination of bodies which have been hung. I have seen the body of one man who hanged himself; I believe the faces of persons who have been hung are as often pale as dark. The bodies of deceased persons will exhibit livid spots produced by suffocation, and which appear the soonest on the pendant parts; this is particularly the case below the pubis both in males and females. In persons hanged and left hanging the blood would soon settle in the abdominal region, and I should expect to find the spots there first. They are often mistaken for bruises. I was called to examine the body of a young man who was found dead in his bed about three weeks ago; these spots were found on his body and his friends supposed them to be bruises; but I immediately discovered that they were the effect of suffocation. There are two places in which it would be difficult to distinguish between suffocation and ecchymosis, namely, on each side of the spine at the loins. It would be difficult to distinguish about the marks on the abdomen. I should be unwilling to hazard an opinion founded on appearances in the private parts or back after a lapse of 36 days. I could place no reliance on appearance in the muscles of the abdomen, nor on any evidence of contusion, nor on the mouth of the womb being open after that time. The dark appearance of the mouth of the womb would afford no evidence of violence unless it were ruptured. A woman can ascertain the fact of her pregnancy in three or four months, at the period of quickening. She may suspect it in six or eight weeks. I have examined twelve different authors, English, French, and American, on the subject of foetuses. Beclard differs in his calculations from all others. According to him the foetus at

3 months is 6 inches long, and at 4 months, 8 inches. The average length as given by authors including Beclard, is between 3 and 4 inches at 3 months—5 inches at 4 months, 6 inches at 5 months, and 4½ inches at 3 months and 28 days;—excluding him, it is 3½ inches at 3 months, a little more than 5 inches at 4 months, and 8 inches at 5 months. I have not practiced midwifery extensively, but my experience accords with this average. If a person had been strangled and then hung up, the cord would slip on the skin if there was room above for the cord to rise. I should expect to see the marks of strangulation much stronger than those of hanging; and to find the mark on the muscle, and probably extravasated blood. The mark would not probably remain as distinct after an interment of 36 days. Sensation continues for a longer or shorter period according to the compression. It would cease in less than a minute in a person of common weight hanging by a small cord. Hanging is the most common mode of suicide, and in a majority of cases it is with the feet near the ground. I have read of two or three instances of suicide by strangulation effected by twisting a stick in a cravat or other ligature round the neck. In Paris the length of the foetus is relied on more than the weight, or any other criterion, to ascertain its age. Its length is measured from the centre between the crown of the head and the feet. The books state cases of menstruation after impregnation, and I have known some in my own practice. The foetuses of different women differ in size. The foetuses of women of very low characters are generally supposed to be smaller than those of virtuous women. [The witness here quoted the opinions of the most approved authors on the point.]

Cross-examination.—The young man to whom I have alluded, who was found dead in his bed, died of suffocation from an abscess. It was doubtful whether the case of the other person to whom I have referred, who was found hanging at Providence a short time since, was one of suicide or homicide; there was some enquiry upon the subject, but the public mind soon became settled. I did not see a cut on the head of this person; there may have been one. I should not depend upon the experiment of washing to detect a bruise later than ten days; but the successful application of this test would perhaps depend less upon time than the state of decay in which the body was examined.

By Mr. Randolph.—An accumulation of the fluids in the cavity of the back might discolor the loins outside by filtering through and producing suffocation.

Attorney General.—Doctor, you have been asked whether women of very low and vicious characters, are likely to have foetuses as large as those of virtuous women—but I would enquire whether such women are likely to have foetuses at all?

Witness.—Promiscuous intercourse is certainly a well known preventive of impregnation. Suicide by strangling is not common, and I could not think that any person could make an indentation three eighths of an inch round the neck with a cord and afterwards hang himself. Such an indentation unless obstructed by the *or trachea*, which the cord in this case is said to have been above, would destroy sensation almost instantaneously.

Attorney General.—Doctor, do you know how long bodies have been interred that are brought into the dissecting room?

Witness.—(with a sly comic smile, and a wink of the eye).—Why, sir, we generally know.

3. Doctor Jabez Holmes.—I reside at Bristol; I have been a medical practitioner 22 years; I have never seen the body of any person who had been hung, but my impression is that the faces of such persons are usually dark. On the subject of the length of the foetus I have not had access to the older writers; Dewees and Burns differ but little as to the length of a foetus at three months old; one says it is three inches long at this period, and the other that it is three inches and a half; the latter says it is five inches long at four months; but Dewees says it is from nine to twelve at the same age! I have a foetus in my possession three months old which is not apparently longer than 3 inches; and the woman who bore it could not tell whether she had been pregnant three or four months. I should not think that any safe conclusion could be arrived at with regard to bruises on a body which had been dead thirty-six days. If however it had been kept in a temperature below thirty-two degrees, no decomposition would have appeared within that time.

Cross-examined.—Dewees and Burns are considered standard authorities, although they differ so widely; my knowledge on this subject is derived from them. The result of a surgical examination depends on the state of the body at the time that examination is made, and not altogether upon the length of time which has elapsed since death. Some times women call for assistance in menstruation after pregnancy, but such cases are very rare.

4. *Doctor William Turner, of Newport*: I have practised physic 38 years; 32 of them in Providence. I never saw a body that had been hung, I believe the faces of persons who have been hung, are commonly suffused all dark, but not always.—In males the discoloration of the pendant parts after death is more common than in females—I should think little dependance could be placed on an examination of a body for the purpose of distinguishing bruises before death from the appearances induced by subsequent decay, if that body had been dead 36 days; at least much more satisfactory conclusions could be drawn from an earlier examination; I should think it would be difficult to swear to ulcerated marks at such a distance from the time of death. From the cellular texture of the abdomen and sexual parts, I should think they might become darker in a body which had been hung twelve hours. The early signs of pregnancy are frequently equivocal quickening, which generally takes place at the middle of the fifth month is the only infallible sign. The length of a fœtus at three months I should expect to be three and a half inches upon an average, at four months six or seven inches, at three months and twenty days five inches or more, but let me add that in my opinion fœtuses may differ in length nearly as much as children do when they are born. I think it would be very remarkable to find a fœtus eight inches long at

three months and twenty days, and I have never met with such a case in my practice. I should expect a mark in a muscle from a very tight ligation even if the flesh had slipped up. I should also expect to find more appearances of decay in a body which had been opened, and buried thirty six days than in one which had not been opened.

Cross examined.—I should suppose violent pressure on the abdomen of a pregnant woman would naturally cause fainting; and the introduction of a hard instrument to produce abortion would increase the liability, especially when considered in connexion with the great mental excitement which must always more or less attend the operation. It would, I should think require a very violent external pressure to cause abortion without the use of instruments. Sensation would be lost instantly from such a tight ligation round the neck as has been described. I should not think it likely that the mark of the string would be found horizontal around the neck of a person who committed suicide by hanging.—*By Mr. Randolph*, I should not think that any satisfactory conclusions could be drawn from the appearance of vagina and uterus thirty-six days after death; nor should I infer a bruise from appearances after such a time, unless indeed an effusion of blood were found under the part.

The Court adjourned till 9 o'clock, A.M.

ELEVENTH DAY.

Friday, May 17.

5. *Theophilus Dunn*: I reside at Newport, and have practised as a physician and surgeon for upwards of ten years. I have seen the bodies of four persons who had been hanged, one of whom was resuscitated. The faces of three of these persons out of the four were suffused and dark; the face of the other was pale, nearly as much so as though he had died a natural death. It is common for dead bodies to exhibit dark and livid appearances, about the private parts more particularly, without authorising any suspicion of violence; they might be mistaken for bruises by inexperienced persons. These appearances are commonly found about the abdomen, and especially upon the flanks. The parts of dead bodies which come in contact with the folds of a bed, or with a table, will commonly present them. It depends upon circumstances whether on an examination made thirty-six days after death we could distinguish bruises from the settling of the blood. If there had been such a degree of violence as to have ruptured the muscles, or injured the bones, it could be discovered at that time without difficulty; but small contusions I should say could not. If there were a discoloration of the abdomen without laceration, I could not give a positive opinion. If it had been occasioned by external violence, it would, as a general rule, be more apparent in the interior than on the exterior, at a period of thirty-six days after death. I could not on such an examination trace the marks of the hands with enough certainty to testify in a court of justice that such bruises were so made. If there were any appearances of indentation from the pressure of fingers, they would be the effect of pressure after death, because, before death, the flesh is elastic. If a person were hung in the evening, and found suspended the next morning, I should expect to find the parts in the region of the abdomen and groin darker coloured than if death had taken place in the common position. The incision for the extraction of the fœtus might be made in two ways. [We here omit some irrelevant testimony on the most scientific and approved modes of performing this operation.]—If the fœtus were extracted three or four days after death, and there were any bruises around those parts, I should think they would have attracted the attention of the physician. If such bruises had escaped my notice upon an examination a few days after death, I should not be satisfied with apparent bruises thirty-six days after. I might have an opinion that they were bruises, but I should not like to give it under oath. I do not know that if there were bruises, they must necessarily be discovered; but I should think that an observant man would discover them. There are some slight bruises, which could not be discovered from echymosis.

I have but little knowledge of the length of fœtuses from my own experience; but from what I have read, I should think the length of a fœtus at three months and twenty days, would be four or five inches; at four months it might be from five to six inches; at five months, from seven to eight inches. If I found a fœtus eight inches in length, making its length above the criterion by which I judged, I should think it was from five to six months advanced; but I should take other circumstances into consideration. I should think the sex, for instance, could be determined with the naked eye towards the termination of the third month. A woman would not be able to ascertain the fact of her pregnancy, with any degree of certainty, till the period of quickening, which is about the middle of the time; though

she would have good reason to suspect it after the first cessation of the menses. There are cases in which appearances something like those of the usual terms, occur during the pregnancy; and some such have come under my own notice; but they are anomalies.

Cross examined.—The increase of the fœtus is most rapid about the middle of gestation, from the third to the seventh month. At 5 months the sex is quite apparent so as to be observed at once under ordinary circumstances. No certain conclusion as to the age of the fœtus can be formed from its size alone. * * * The state of the body in reference to its stage of decay would affect the accuracy of an examination thirty-six days after death. Under ordinary circumstances, a body interred in December would not decay so rapidly as one buried in August; and I could place more reliance on an examination of the former than of the latter. I should attribute the appearance of coagulated blood in a muscle to echymosis, which frequently presents the appearance on examination, while sanguilation does not. A steady, firm pressure would produce no mark; it would require a sudden blow to produce it. I should be satisfied as to these causes from a general view. Blackness in the back might proceed from echymosis; and it is laid down in the books that swelling and lividity of the neck and shoulders might also appear, but not always. Black and blue spots are not laid down as phenomena of hanging. An indentation of three-eighths of an inch produced by a cord would suspend respiration as well as circulation in the carotid arteries, but not entirely in the vertebral. In submersion and asphyxia by hanging both continue. In suicide by hanging the cord is generally not horizontal, but oblique, nor is it equally tight. In strangulation without suspension, the cord would probably be more horizontal. I should be uncertain about marks on the countenance; if the body was suspended after the cord had been drawn as tight as it was found in this case, I think there would be no difference in the appearance.

Direct resumed.—There is perhaps less difference in the length of new-born infants than their weight. If the body was dug up and the fœtus extracted and returned, I should not expect the body could long continue in a perfect state; but to find the muscles in the region of the spine near the pelvis changed, more than those in other parts of the body. If no internal marks were found in the region where the prints of the hands on the abdomen are said to have been seen by the women, I should hesitate as to a conclusion founded on an examination 36 days after death. In a case of life and death, I could not rely on the appearances of bruises without laceration. I never knew a case, nor do I know of any author, who speaks of one where a fœtus eight inches long was supposed to be only three months and twenty days old. It is common to find persons who have hanged themselves, very near the ground.

6. *Doctor William Graves*: I live at Lowell, and have practised medicine upwards of 25 years. I presume I knew Sarah Maria Cornell. She gave me her name as "Maria S. Connell." I first saw her at Lowell on the 30th August, 1830. She said she was a member of the Methodist Church. She applied to me for relief in the lues venerea, with which she was afflicted; it was a very severe case, not so bad as I had seen, but worse than common. It was not, I should think, of long standing. She came to me between 10 and 11 at night, offering as an apology for the lateness of the hour, that she had been

at the Methodist meeting-house. She asked if I was attending a young man, whom she named. I told her I was not. She said she had been improperly treated, and asked if I could cure her. I gave her medicine. By reference to my books, I find that she called seven times between the 30th of August and the 20th of September. Shortly after her last call, she left the town, as I understood, and I did not see her again probably for six months or a year. The first time she came, while I was compounding the medicine for her, she made, I thought, some very strange observations, the purport of which was that she had been a member of the church, was a pretty bright Christian, and could pray and exhort as well as any of them. I do not recollect all that she said. I saw nothing else remarkable in her appearance. On her next visit, she handed me a writing, saying I did not credit what she had formerly said. She stated that she was about to leave town for Dover, and had a letter of recommendation from Mr. Avery which she showed me stating that she was a church member. On one occasion being at Mr. Howes, I heard some loud talking in a room, and on entering saw it was this girl. She was talking of Mr. Avery, and seemed to be blaming him for turning her out of the church. She called him a rascal and a villain, and said he ought to be hung. She uttered no threats that I recollect. Mr. and Mrs. Howe and some others were present at the time. She once said in my office that if a certain minister should know she had the disease he would swear a little, and added that she would rather drown herself than he should know it. At another time she asked me if I was attending on two other persons whom she named. They were not under my care. She frequently spoke of the first young man I have alluded to, saying he ought to pay her bill, and desired me to speak to him on the subject, which I did. She said she thought it was for her interest to remain in the Methodist Church, and begged me to keep her condition a secret. She said she would rather be drowned or die, or some such expression than have it known, though I did not understand it to be her intention to drown herself. She uniformly called late in the evening, except the last time, and generally gave the same reason as at her first visit. I thought it my duty to inform Mr. Avery of these things and conversed with him accordingly. This was previous to her leaving Dover, at which time she was not cured. I have lectured on the practice of medicine to my pupils, but not on anatomy.

Question—From your observation of the character and conduct of the deceased are you of opinion that she was deranged?

Answer—I hardly know how to answer. Her conversation was such that I did not know what to think. Her language was curious and unlike that of other females, but I should not like to give my opinion that she was deranged. On her first visit she appeared modest and well-behaved at first, but talked very differently before she went away. After that time I saw nothing strange in her manner, till my last conversation with her, when she appeared to be either in a passion or partially insane; I should not like to say which. The facts on which I ground this opinion, I have already related.

Cross examined—I ascertain the time of her visit to me from my books to which I have referred: they are not here. Independent of them I have no recollection of the date and could not swear to the fact that she called on me in August 1830.

Attorney General—In your opinion, Doctor, would the fact of the girl being so depraved as to contract this disorder, coupled with the fact that being a Church member herself she said she "could pray and exhort as well as any of them," be an evidence of her insanity? **Answer**—Not alone; nor have I given my opinion that she was insane. What I have said was founded on other things also. She frequently got up from her chair, set down again, took great pains in adjusting her bonnet, and wore a handkerchief round her face. This might have been from a wish to conceal her features. My impression as to her insanity was removed on her showing me her certificate of church membership.

[The witness being asked the names of the three men of whom the deceased had spoken to him, begged the Court to excuse him from answering the question. The Court said he could not be excused, and he accordingly gave their names, which as they have no necessary connection with the subject of the trial, we suppress for obvious reasons. The witness, after being examined as to the number and names of his pupils at that time and their present places of residence, stated] I think I was then Mr. Avery's family physician, but am not so now. I am not positive I ever prescribed for Mr. Avery himself.

Direct resumed. Mr. Avery resided at Lowell about two years, and his character as a moral and religious man, I presume was good. I did not attend his meeting, but heard him generally well spoken of. I have heard him found fault with, but not for anything affecting his moral character, against which I know nothing. I never prescribed for him in the foul disorder.

Cross Examined. I do not know whether the deceased was the habit of going to Mr. Avery's. I wrote a letter on this subject to Mr. Bullock.

Doctor Noah Martin—I reside at Somersworth, Great Falls, and have practiced medicine for 10 years. In January, 1831, a person who gave me her name as Sarah Maria Connell came to my shop to get a prescription for a complaint which proved to be chronic gonorrhea, apparently of long standing. I thought there was something singular in her manner for a person professing to be a Christian. I did not then examine her particularly in relation to her disease; on a subsequent occasion she told me she had been a member of the Methodist Church, but had been excommunicated. She said she had been diseased for a length of time, and appeared to be familiar with the instruments necessary to be used in such a case. She said she had been under the care of Dr. Graves of Lowell; that he had conducted himself indiscreetly, by which means Mr. Avery had learned her condition; and that in consequence of this she had been turned out of the Church, and was ruined. In the course of six weeks, she called probably as many times, and was very loquacious; she went into particulars of her contracting the disease; she said a young merchant in Lowell had paid her attentions, and invited her to ride out with him on a Sunday afternoon; that they represented themselves, where they put up, as man and wife; that they slept in the same bed, and that her disease was the result of their cohabitation. Speaking of Mr. Avery, she said he ought to have been satisfied with turning her out of the Church, but that in addition to this he had made representations concerning her which had prevented her from getting into the church at Somersworth. I recollect no conversation with her which led me to infer mental alienation. Her mode of conversation and gesticulations differed from those of most persons. She talked on a variety of subjects without any regular order—not incoherently, I should say, but passing suddenly from serious to light subjects, and the reverse. At one time she would be in tears, and talking of her complaint and situation; and in five minutes afterwards, laughing and talking on other subjects. Her appearance and manner I thought indicated that her mental operations were considerably deranged. I did not suppose her mind affected to the point of insanity, but only that her ideas did not flow as regularly as though her passions had never been disturbed. [The witness being required to state exactly the extent of his impressions in relation to her state of mind at the time, said] There was something peculiar in her manner and appearance, and different from that of people generally; but this was not a sufficient ground for the conclusion that she was absolutely insane, but indicated that she was acting under the influence of excited passions and mental anxiety and disturbance.

Cross-examined.—I wish to be understood that I do not say she was insane. In some stages of the disease with which she was afflicted the passions may be disturbed, but this was not the case while she was under my treatment. She used no threats in relation to Mr. Avery in her conversations with me. I was once called to prescribe for her in the month of May, not for this disease, but for an ordinary indisposition. After this I never knew anything particularly about her. I fix the date of her first visit to me in January, by my books, but I also recollect it from the cold weather, and a circumstance attending a small vial. I cured her of the disease.

Direct resumed. I think I could remember the year in which she came, and that it was winter, (but not the day) without referring to my books.

S. Asneth Bowen.—I live at East Sudbury, and have known a person whose name was written "Sarah Maria Connell," on the list at the Factory in Waltham. We were both engaged in weaving. During our work she frequently exhibited strange appearances, and would often start away as if something alarmed her. One day she went out of the work room into a private room with a small cord in her hand. I immediately followed her, opened the door, which she had closed on entering, and found her with the cord in her hand, looking up as if to find something to hitch it upon. She stood in this position, [stretching her arms towards the ceiling.] When I entered she started back as if alarmed at seeing me, and went out, endeavoring as she went to hide the cord from me. I followed her because it was my impression that she intended to make way with herself. She was at Waltham about three weeks, during which she boarded at three or four different places. I never saw her before she came to Waltham, and do not know where she went to from that place. This was in the summer, but whether the last summer or the summer before I cannot recollect.

Cross examined.—I can say it was not three summers ago. She was about my size, and I should think about 25 years of age. I first mentioned this occurrence to one of the factory

girls, but cannot recollect whom. I only told it to one at that time. Her strange appearance, and her having the eord in her hands made me think she was going to commit suicide. There were nails and spikes in the room she went to. I think I left the mill in the August of the Thompson Camp Meeting. I cannot tell why I did not tell my suspicions of her intention to commit suicide to the persons with whom she boarded. I next told this to Mrs. Smith at West Sudbury, directly after I heard of the death of the deceased. Mr. Joseph Merrill applied to me for information about her sometime last winter; she remained in the factory about a week after I saw her go into the room; she did not do as much work as other girls; more than forty girls worked in the same room with us; my loom was half way across the room from her's.—The string she had in her hand was made of cotton; it was nearly three-fourths of a yard long, doubled and twisted. I never had any disagreement with her; I do not know why she changed her boarding house so often. At that time she was not a member of the Methodist church. I was at the Thompson Camp Meeting, and saw her there on the Tuesday, Wednesday and Thursday. She appeared to shun me, and I could not get an opportunity to speak to her. I also saw Mr. Avery at this meeting on Thursday, and I think also on Wednesday; but I did not see him conversing with Sarah Maria Cornell.

9. *Mary Ann Leary*.—I reside at Dover, and was acquainted with the late Sarah Maria Cornell in 1830, both at that place and at the Great Falls. She once talked to me about destroying herself; she went out, and afterwards came in crying, saying she had been out to make way with herself, but that when she came to the place her courage failed. She said the reason was that Mr. Avery had not used her well in expelling her from the church. I had some apprehension that she would destroy herself; for I have heard her say she had a mind to destroy herself, and that she thought she should. At this time I boarded in the same house with her at Mr. Horner's.

Cross-examined.—I first told this story to Elizabeth Honey, a few days afterwards. The Rev. Mr. Denny, of Dover, first applied to me to give this testimony. She seemed to consider it a great misfortune to be expelled from the church. I never knew nor heard of any other attempt to destroy herself. I have related these conversations with her to my landlady in Lowell.

10. *Ezra Parker*.—I reside at Thompson in Connecticut, and knew Sarah Maria Cornell about seven years ago. She came to my tavern one afternoon about 3 o'clock; it snowed some, and was cold and chilly; she asked if she could be accommodated with a bed there until the next morning, and I said she could; but when she took off her cloak I saw she was very large in the family way, and said to my wife: I am afraid this woman will be sick before morning. She said she was a member of the Methodist church, and appeared to be very much engaged in the work of God.

Shortly afterwards Mr. Wm. Taylor and his brother Charles came in; and Mr. William Taylor said, "What! the devil! Maria, are you here?" Yes I am," and began to accuse him with being pregnant by him, demanding money of him or she would make him pay more; they conversed during the evening in the inside room, and had refreshments together; she said if he would give her the money she required she would sign a bond or writing, acquitting him of her being with child, and then you ever did in your life to make a garden of me to hear seed to you, for nothing." She slept there that night; Mr. Taylor also slept there; and when she was going to bed my wife saw her take a blanket or some such a thing folded up thick from under clothes in front; but in the morning she came down as spare as any other woman. I had witnessed the evening before the bond or writing acquitting Mr. Taylor which she had drawn up. I should judge her age to have been about twenty at that time. I am a Member of the Baptist Church, so that you have some Baptists on this side as well as Methodists.

Cross-examined.—It was Elder Thatcher who first asked me about this affair. I never saw her before or since, but I heard her called by the name of Sarah or Maria Cornell.—When she came in she appeared to be nine months gone; I do not know how she came to be so changed in the morning for I did not hear her cry out in the night—I saw the bond which she drew up the night before, but I do not think any money was paid then; it was paid I believe the next morning.—She was quite "gaunt" in the morning, before the money was paid—I do not know how much was paid her, but I saw money in his hand. It did not occur to me that this was a hoax upon me instead of Mr. Taylor.

11. *Owena Parker*.—I am the wife of the last witness; I recollect seeing Sarah Maria Cornell on the occasion he has mentioned. When she came in and asked if she could sleep there, she said she did not come in as a stroller; but that she had respectable parents, and a sister at Killingsley married to a per-

son of the name of Rawson; she said she intended to have gone to — by the stage, but she was tired and the weather being bad she should wish to have a bed that night; I overheard a loud conversation between her and Mr. Taylor, in which she said "You must get up earlier than ever you did in your life to make a garden of me to bear seed to you," and that he had better settle it off than go into court with such a dirty character. She wrote a bond to acquit him of her being in that way by him; I heard it read, and saw it believed the next morning. She said she had been brought out to the gospel light under the preaching of the Rev. Mr. Maffit of Boston, 6 years ago. When she was going to bed, and I was at the top of the stairs I saw her take out a blanket from under her clothes which was folded up several mes.

Cross-examined.—She delivered the bond to Mr. Taylor in the morning; and she was then quite trim. She looked quite "gaunt" in that respect when the money was paid; this Mr. Taylor is now dead.

12. *Brooks Shadlock*.—I reside at Lowell, and knew the deceased by the name of Sarah Maria Cornell in the years 1829 and 1830. I had charge of a weaving room at that time in which she worked. She had two spots of working at the mill; she went away the first time for not attending to her work and letting her "cam" wear out, and she was gone 10 or 12 months. I do not know her general character, but she was discharged because I was satisfied she was not a good character. She acknowledged to me that she had held intercourse with different individuals: I think one or two; perhaps two, but I think not more. She said nothing about the frequency of this intercourse. She was desirous to remain a day or two at least, but I told her she must go. Knowing she was a pious person, I asked her why she conducted herself so; and told her she ought to make acknowledgments to her minister; but she did not go, and I went and told him myself. Mr. Avery sustained as good a character in Lowell at that time, for anything I know, as any other person. He lived in Lowell about two years, and lived there also. I belong to the Congregationalist's Church.

Cross-examined.—Sarah M. Cornell was dismissed the second time about the latter end of September, 1830, she had this time worked in the mill three or four weeks. I was not intimate with Mr. Avery's family.

13. *Nathan Howard*.—I reside at Northwick, Massachusetts, and knew S. M. Cornell. I did not know her character to be bad until the latter part of the summer of 1830. I think it was in the month of July in that year that reports were in circulation of her having held intercourse with different men, and I believe she never sustained a good character again. She told me she had once been charged with theft, and had attempted to destroy herself. I brought charges against her before a committee of the Methodist Episcopal Church at Lowell, on the 1st of October, 1830, for fornication and lying, and she was expelled; Mr. Avery was the minister at the time. I have no recollection that any other person preferred charges against her. I next saw her on the first Sabbath in June, 1831; I was standing near the meeting house door, when she spoke to me and acknowledged the truth of the charges I had preferred, and said she had experienced great temptations to destroy herself, which she thought she should do at some future period.—I have no recollection of any other conversation with her, except some flashes in her eyes, which made her look different to what she had looked before; by flashes I mean that her eyes looked red and fiery with an appearance of madness. A short time before I noticed her walk in going to and from the meeting-house, and she appeared as though she could not walk regular nor stand still. This was all I saw, and I had but a short time in passing to observe that.

Cross-examined.—She was a regular member of the church during the time she lived at Lowell. She was not present when the charges were brought against her, nor when she was expelled; Mr. Avery confessed he had advised her to leave the place at this time, because the charges against her were of such a delicate nature. It is not always the custom in the church to confront the accuser with the accused; it was Mr. Avery who put the charges against her in form; he did not speak to me first on the subject of her expulsion from the church. She remained in the church after her character was known to be bad in July, until the first of October. She went to the same place of worship I did, and was always regular in her attendance. I knew nothing against her character during this time. The reason she stated for returning from the Great Falls to Lowell was to make confessions and get reconciled to the church, and she brought a petition signed by some class leaders; they gave her signatures upon condition that she behaved well for the future.

14. *Mary Ann Barnes.* I reside at Lowell, and have known Sarah Maria Cornell five years this spring. I conversed with her on the subject of the charges against her; she at first said they were not all true, but after pressing her a long time she confessed she had behaved improperly with men; she mentioned a particular person, but did not say how many times; upon farther interrogation she confessed to have had intercourse with three or four men. I asked her how she could do so in her boarding house, and she said she did not, but went to a place near Lowell, called Belvidere, where there was a bed she had been in the habit of sleeping in whenever she liked. She was absent one communion Sunday, and she afterwards told me she had rode out with a gentleman who had taken her to a tavern where they went into a chamber and drank wine, and that she drank so much she could hardly set in the chaise; she intimated that she had then an illicit connexion with him, not in words, but judged it from her countenance. She showed me a copy of the letters of confession she had sent to Mr. Avery, burst into tears, and implored me to forgive her, and I told her I would forgive her if she was forgiven from above.—She also mentioned that she had been doctored; the Doctor one day called for the payment of his bill; she went into another room with him, and came out very indignant, saying she would never pay him; the bill was \$10, and he said if she did not pay it, he would bring the Sheriff; but before the Sheriff came, she disguised herself, went into another house, and fastened herself into a room, where she waited to take the stage; I went to her, and it was then she read me her confessions to Mr. Avery. She said she had been accused of having the bad disease, but that she did not know whether it was or not, though it was a bad humor. She told me Mr. Avery had asked her for her certificate, and that she said she had lost it, yet that she had not really lost it, and could show it to me, which she did. Mr. Avery, as she afterwards told me, had written to her for this certificate, and threatened to expose her in the newspapers if she did not return it, and that she had then done so. During these conversations, she could scarcely stand or sit still. Mr. Avery's character was at this time good.

Cross-examined.—I was not perhaps her most confidential friend; there may be many who were better acquainted with her than I was; we met in class together; during two or three years she was a member of regular standing in the Church, and I heard nothing against her character. The name of the

Doctor if I must mention it, was Doctor Graves; and the reason she assigned for not paying his bill was because it was unjust, for instead of owing him \$10 she did not owe him half a dollar—I believe she had not the money to pay it. She borrowed the dress in which she disguised herself of Abigail Bigelow. She merely took off a good dress she had on, and put on a worse one.

15. *Lucy Duvall,* of Lowell, testified to the said conversations and confessions of the deceased as the last witness, and added the following:—"I heard her say she had a mind to destroy herself on account of her having been expelled the church at Lowell, and that she would be revenged on Mr. Avery and every member of the church—she confessed that she had taken things which did not belong to her, and that although the theft had never been proved against her she was tempted to destroy herself.

Cross examined.—She was anxious to join the church after she said she would be revenged. I do not know whether she visited Mr. Avery; she lived near him.

16. *Lydia Pervere*—I resided at Lowell and first knew Sarah Maria Cornell five years ago. She came to me in Boston in August 1830, and asked me if I was going to the Camp Meeting at Weston; I said I was, and she enquired if Avery was going to preach, saying if he was, she would not go, nor would she meet in class with him, for some one had been to him with charges against her. I asked her if the charges were true, and she said they were; that she had had connexion with two or three men, and had been to a tavern with a gentleman on the Sabbath. I never perceived any thing peculiar in the state of her mind, but she once came into the factory in a white dress, screaming and crying excessively; and on my asking her what was the matter, she threw her arms round my neck and cried till I was quite disgusted with her! I know of no conduct of her's particularly awful.

Cross examined.—She went to the Weston Camp Meeting, and she was then a member of regular standing in the Church. She appeared in the white dress at the factory before she went to the Weston camp meeting. There was nothing very remarkable in her wearing this dress. I have seen her in Mr. Avery's house, and she sat down as other people did, but not for many minutes—I think this was before the charges were preferred against her—I was once present when she received a letter and burnt it. Court adjourned until Friday, 9 o'clock, A. M.

TWELFTH DAY.

Saturday, May 18.

17. *Ellen E. Gregg,* (a lady very deaf)—I first became acquainted with Sarah Maria Cornell in the Fall of 1829. I saw her standing on the threshold of Mr. Prescott's house in Lowell, in the early part of the summer of 1831. I asked her about her health and inquired if she had seen Mr. Avery. She said she had, and when I inquired what he had said to her, she replied I know what he said and I will be revenged on him if it costs me my life. She did not tell me what he said.

Cross-examined.—I thought it strange she should speak in such a way of a minister. I cannot remember to whom I first mentioned this fact, but it was to a woman; I made no communication of it to Mr. Avery before I went to Bristol. I do not know that ever I told any one else of it but that woman. I do not recollect the day of the week on which the conversation occurred nor whether it was on a Sunday or not. I was never very intimate with the deceased. I rode in a car with Mr. Avery from Bristol to Boston, but do not remember the day; the Rev. Mr. Griffin and his wife were also in the carriage. We left Bristol some time in the forenoon; I do not recollect the name of the place where Mr. Avery joined us nor whether it was in Rhode Island or in Massachusetts, nor any thing that was said when he joined us. But I do recollect that he said he should deliver himself up to the Supreme Court. The day of the week on which we arrived at Boston was Friday; I think we stopped only one night on the road.

Attorney General.—Pray madam were you as deaf in the year 1831 as you are now? Witness: Not quite, but a person speaking to me at that time was obliged to raise his tone.—When Mr. Avery joined us he wore a surtout.

Direct resumed.—I went to Bristol to give testimony but did not get there in time.

18. *Sarah Worthing.*—I reside at Lowell, and was acquainted with a girl of the name of Maria Cornell. She wrote her name Maria S. Cornell. Sometime in the year 1828 when I first became acquainted with her, she received a letter from her mother, and I recollect her telling me that she did not like to visit her friends because her sister was jealous of her husband and her, and that her sister had told her she would come to the gallows there were so many men after her. I often heard

her speak of her brother and her mother affectingly. She told me that Mr. Rawson had often said to her that she was more attractive than her sister meaning his wife; and that he often spoke to her about her eyes. She used to keep cherry wine and brandy in her room; but I have never seen her intoxicated though I have seen her when she said she had taken too much, and that it had flown into her head. She said that she had in one place been accused of stealing a piece of cambric; and that she was so vexed that she went out to hang herself, but that when the rope was fixed round her neck the thoughts of eternity prevented her. She said that she fixed the rope to an apple-tree. I had this conversation with her in the year 1829 in the factory at Lowell. When she came from Summersworth to Great Falls in the year 1831, she called on me one Monday morning; she said she had a paper which she was desirous I should sign expressive of my forgiveness and fellowship; said that she knew I was acquainted at Great Falls, and she had come to see what were the feelings of the methodist towards her. She also stated that she had written two or three confessions to Mr. Avery but that he had taken no notice; that he was a hard hearted man and had no regard for her feelings, but that he and the methodists would see the day when they would be sorry for it. She spoke this with emphasis. She did not show me the letter, but said that those who signed it must "forgive and fellowship with her" I told her there were some hard stories in circulation respecting her, and asked if they were true; she said they were true, that she was a guilty girl, and had been led on strangely; that she had held criminal intercourse with three persons. She also acknowledged that she had had the disease though she was ignorant of it at the time. She said that there were two or three persons with whom she would have had intercourse, but that the place proposed was exposed to much passing, that she was deprived the privilege. No! (said the witness) I don't mean that she said privilege.—She frequently read me letters from her brother James, her mother and several from Mr. Rawson; his name was signed to them, but I don't know that he wrote them. I did not sign the paper, for her conduct was such that I considered her a very vile girl. She called me hard-hearted for refusing and wept.

Cross-examined.—I belong to the Baptist Church: I have

known her at different periods from the year 1828 to 1831.—I knew nothing against her except that she told stories. I think she was in regular standing in the Methodist Church at the time I speak of. I mentioned these conversations at the time to Mrs. Prescott—but Mr. Avery I did not know. I think she said the theft was committed in Providence, but I do not recollect how long before the time of her telling me. I have not known her since 1831. I think she said Mr. Avery signed the paper, but that his forgiveness was nothing.

19. *Mrs. Lucy B. Howe.*—I reside at Lowell and have been well acquainted with Sarah Maria Cornell. She came to my house on a Saturday in the beginning of June 1831 from Great Falls. A lady who boarded with me came to me and said Sarah Maria Cornell was up stairs and wished to stay all night. I went up and she requested me to sign a paper indicating forgiveness for her conduct. I told her that many heinous charges had been brought against her; that I understood she had been diseased and that she had agreed to meet a man at Belvidere once a week, on Thursday evenings. She confessed that a young man took her from the Episcopal meeting house to a tavern on a Sunday, and that she became so intoxicated that he was obliged to hold her in her seat. She exclaimed, "Oh! I have indeed been very wicked, but these things are nothing to what I have been guilty of." She slept at my house that night, and the next morning I inquired what Mr. Avery had said about all this? She replied that he said to her forgiveness from me is nothing, I can place no reliance on you unless I see a reformation in you by a godly life and a well ordered conversation. Dr. Graves called that morning to see a person who was sick in my house, and happened to see Sarah Maria Cornell.—He asked her to pay the bill she owed him; she replied that she did not owe him a cent and would not pay him, calling him and Mr. Avery very hard names. She said "I have not the money for the old Devil, and if I had I would not pay him a cent."—When I told her she ought to pay him, as he could certainly compel her, she said "Don't you think I am cunning enough for that old Devil? why I have borrowed a calash and shawl, and met him half a dozen times in Lowell this morning without his knowing me." She said Mr. Avery had not acted as a Christian minister ought, that she had written him two letters which he had not noticed, and was now come to see about them herself. I told her I thought he acted right, and she replied "what do you think I care for you or Mr. Avery or the Methodist Church? I will be revenged on him and them if it cost me my life." And she said this with a look that frightened me. I did not see the paper which she wished Mr. Avery to sign, nor do I know that he signed it, but she told me that he had done so.

I was in Bristol in the early part of October last, and in a conversation which I heard between Mr. Avery & Mr. Holloway, the former asked the latter whether he would go with him on the Island to see the coal mines, as he was anxious to do so before he left the Bristol Station. Mr. Holloway said he could not then fix a time for going as his family were sick, but that he would accompany him at some more convenient time. Mr. Avery's character at Lowell was generally good, until it became affected by this accusation.

Cross-examined.—I was present as a member of the church when Sarah Maria Cornell was read out. On her return to Lowell in 1830 she came to my house on the Saturday and left on the Monday morning; she did not sleep at my house on the Sunday, and I did not ask her where she had been. She had seen Mr. Avery on the Saturday, and brought the paper from him signed. She made no accusation against Dr. Graves to me, but I heard him say he had read something she had said of him. Mr. Avery left Lowell for Bristol in July.

20. *Elizabeth H. Shumway.*—I reside at Grafton, and first became acquainted with the deceased at Slatersville, in 1823 or 6. She then went by the name of Maria Snow, and I believe joined the Methodist Church there under that name.—A gentleman came there and called her Maria Snow, but she said he was mistaken. Her brother came to see her afterwards, and his name being Cornell, she said her name was Maria Snow Cornell. I stood with her one day in 1826 on the bridge gazing on the water, and she said "How beautiful that water looks! I wish I was at the bottom of it, for then my troubles would be at an end." She said that she had been courted by Grindall Rawson before he married her sister, but that the latter by art and stratagem had taken him from her; but she had the consolation to know her sister was jealous of her. She added that the reason of this jealousy was that she and Grindall Rawson had been as intimate as man and wife, and her sister knew it. He had, she said written some verses to her on the blank leaf of her testament, she gave me a copy of them. She said she had often been tempted to make away with herself. She was dismissed from the Church in Slatersville for bad behavior and having intimacy with men. I heard the charges of lying and

fornication read against her in the church, and she acknowledged they were all true; this was seven years ago last October. She said she left her mother's house because her sister was jealous of her, and had left with the intention of destroying herself, but that she afterwards thought it might be as well to leave her home and never again return. It was then four or five years, she said, since she left home, but that her brother and Mr. Rawson had been to see her. When I first became acquainted with her she said she was 24 years of age.

Cross-examined.—The Rev. Mr. Palmer called on me about giving my testimony. When S. M. Cornell was expelled from the church at Slatersville she had been a member about one year, and was expelled for misconduct which she had been guilty of within that time. I saw both her and Mr. Avery at the Thompson Camp Meeting last fall, but they were not together. I have not a copy of the verses written in my Testament by Mr. Rawson, but I can repeat them. The witness at the request of the Attorney General, recited them; they were in five simple and imperfectly constructed stanzas, advising scrutiny into the character of those persons whom she might be induced to consider her friends, and moral rather than amatory throughout; the two following may serve as a specimen:—

"Will you my friend as trivial deem
"This simple offering of esteem?
"Accept it as a tribute due
"To youth, to friendship and to you.
"And with it take my fervent prayer
"That you be heaven's peculiar care;
"May virtue o'er your heart preside,
"And wisdom all your actions guide."

Attorney General.—My object in troubling the Court with the recitation of these verses was to ascertain whether they indicated any improper passion between the deceased and her brother-in-law.

21. *Miriam Sibley.*—I resided at Somersworth, Great Falls when S. M. Cornell came there from Dover, which was two years ago in January last. She worked in the same room with me, and told me she had been a member of the Methodist Church. She said she had a recommendation when she left Lowell, to join the Church again, but should not that year.—She afterwards said she had not got a minister's recommendation, but that she could send to the Rev. Mr. Avery and get one; sometime afterwards, however, she said she had been disappointed of getting one, and would be revenged on Avery, if it cost her her life. If there were no Lowell people at Great Falls, she said she could get along very well, because she could write a certificate herself, as she had done once before, when she had lost the genuine one, and the minister could not detect the counterfeit. She said she was so well acquainted with Avery's hand writing, and could imitate it so exactly that no one could know it from his own. She added that there was scarcely any person's hand which she could not imitate if she once saw it. She had been so greatly disappointed, she said, in not marrying Mr. Rawson, that she had often attempted to make away her life, which she now no longer valued; but that her friends had watched her so closely as to prevent her succeeding.

Cross-examined.—I related these conversations to two females who worked in the same mill. She said she had seen Mr. Avery's hand writing in Lowell, but did not say she had any of it in her possession. I did not see any thing bad in her conduct, but I know she told a great many stories. I did not board in the same house with her. I know of no particular story except that about the certificate.

22. *Caroline D. Tibbitts.*—I came from Dover: I know the deceased by the name of Maria S. Cornell. I first saw her at the Rev. Mr. Merrill's four years ago in Lowell, and afterwards worked in the factory with her. Mr. Merrill was then the Methodist Minister of Lowell. I afterwards knew her at Somersworth, Great Falls, where she at length joined the church; her name was put on the class-book by the class-leader, but some of the members insisted that it should be taken off, and it was within a week afterwards. About this time the class-leader came, and inquired for Maria Cornell; she desired me to go to the door and speak to him, for she was afraid to go, her flesh it should be the doctor to whom she owed mercy at Lowell, or somebody sent by him; but when she heard who it was she went herself. One day shortly after she came to Great Falls, I was walking with her, and she spoke with great feeling of her excommunication from the church, and its effect upon her character; she said she had been exposed by the physician, Dr. Graver, at Lowell, by the exercise of the factory, and by another person, whom she did not name; and asked my advice and assistance toward her procuring a situa-

tion. She stated that Mr. Avery had sent for her, and asked for her certificate, but that she had told him she had lost it, together with the pocket-book which contained it, at the camp-meeting, but that this was not the case. Mr. Avery, she said, had advised her to go to her mother's, as the best place for her; but she said she could not go home after the disgrace she had suffered, for her family were high minded, and might upbraid her; that these things had so affected her as to induce her to attempt suicide, which she would have done one evening if her courage had not failed. She showed me a copy of the letter which she had written to Mr. Avery, and I read it; it was three pages long, and contained her confessions of theft, lying, and fornication, and concluded with solicitations for forgiveness. She said, "I'll be a member of the Methodist Church in spite of Avery; I will go to Connecticut, where I am not known, and write a certificate myself, as I have done before." She also confessed to me the ride to a tavern on a Sunday, and that she used to spend evenings with a young store-keeper at Lowell in his counting room. On several occasions I thought her conversation was very strange; and on one evening particularly. She had been turned out of her boarding house and came to me to make known her troubles. She reviewed her past life, and said her character had once been as blameless and unsullied as that of any person living; her feelings during this conversation quite overpowered her; she threw her arms around my neck and wept aloud. When she spoke of her temptation to destroy herself she looked so wild that I was quite alarmed. On another occasion she came to me in the factory and talked of her unhappy circumstances till she cried exceedingly; but the moment afterwards she talked of other matters, and laughed so loud that she might have been heard all over the room.

Cross-examined.—She seemed to feel most severely for the loss of character she had suffered in consequence of her expulsion from the church. I thought she expressed herself rather in the spirit of revenge and pride than of piety in these conversations; for she said she had been a member of the Methodist Church too long to be turned out by Avery. I am not certain my memory is correct with regard to her having confessed to the charge of theft in her letter to Mr. Avery; indeed she did not confess it, but admitted that she had been somewhat to blame in the transaction. The other charges she did confess. She said that the attempt she had made to kill herself was but a few evenings before she told me. I do not recollect to have ever mentioned these conversations until after her death. I understood her to say that her certificate was in the handwriting of Mr. Avery; she never told me that she had slept one night at his house. The intimacy which she mentioned between herself and the young man at Lowell, she seemed to describe as a courtship, and never alluded to anything which implied an improper connexion between them. I last saw her at Somersworth about two years ago, when she was turned out of the mill; I don't know that she was turned out, but she went away nobody knew whither; I sometime afterwards received a letter from her dated at Boston, requesting me not to tell any one where she was, for she was greatly in debt. I suppose I was the most intimate friend she had at this place, and she went to Dr. Graves late one night when she had not been able to speak to him during the morning, and that he had attempted to take improper liberties with her. She seemed very anxious to join a class at Great Falls, and although she was not admitted a regular member, she generally attended the class meetings, and her attendance at church on the Sabbath was as regular as that of any member. She said Doctor Graves had demanded more of her than she owed him, and complained of his having violated his professional confidence in speaking as he had of her disease.

Direct resumed.—She neither confessed nor denied that she had the venereal disease, and did not tell me what had been the matter with her.

23. **Mary E. Warren.**—I knew Maria Cornell at Great Falls two years ago; she said she would get into the church again if she forged a certificate that she either had made or could make one which no person would know from Brother Avery's. She said she had been ill used in her expulsion from the church at Lowell, and would be revenged on Avery if it cost her her life. She told me she had been tempted a number of times to drown herself in the canal, and that she thought she should jump in yet.

Cross-examined.—I did not mention these facts to any body until after this affair, and first mentioned them to Mr. Storrs. I did not communicate them to Mr. Avery nor to the minister of my own church, and I did not because I did not think of her fulfilling her threat. When she spoke of it to me she was highly excited and weeping. I don't know whether Mr. Storrs

questioned me as to these facts before I mentioned them to him, but he inquired of me if I knew anything relative to the cause, and I then told him what I knew. Maria never told me that she had any of Mr. Avery's writing in her possession, nor that she slept at his house when she went to get the paper signed. I do not know in whose hand-writing the recommendation was which she received from Lowell.

24. **Ann Cottell.**—I boarded in the same house and slept in the same room with Maria Cornell, three years ago at Great Falls, and on her being refused admission to a love-feast, heard her declare she had a mind to drown herself in the canal, and she was weeping at the time. I once thought from some appearances that she had nursed, and I asked her if she had not, but she made no reply.

Cross-examined.—I mentioned what I thought about her having nursed, to Mrs. Paul, the lady with whom we boarded, and who was also present when she threatened to drown herself; I did not give her any advice when she threatened to drown herself.

25. **Sarah Honey.**—Related similar conversations with the deceased, in which she talked of drowning herself, and in which she called Avery a hard hearted unfeeling man who when she went to his house did not treat her with common politeness.

Cross-examined.—Maria attended the church meeting as regularly as the admitted members; I don't remember that she assigned any particular reasons for wishing to drown herself, nor did I adopt any measures to prevent her doing so.—I believe I said something to my mother about it after she left the place; but I don't think I related the whole of the conversation until I went to the Court at Bristol.

Recess till 3, P. M.

26. **Rev. John Dow.**—I now reside at Concord, N. H. In 1830 I resided at Dover; in the fall of that year Sarah Maria Cornell called on me and said she was a member of the Methodist Episcopal Church in Lowell, at the same time producing a certificate of membership from Mr. Avery; but it being dated some months back, we did not receive her into the church as a member in full. Shortly afterwards I received a letter from Mr. Avery, stating that a girl of that name had a certificate which she ought not to have, for she had been expelled the church for fornication and lying. Before I had an opportunity of seeing her on the subject of this letter, she called to inform me that she had received a letter from Mr. Avery, requiring her to send back the certificate. I advised her to do so, and told her the contents of the letter which I had received, assuring her that with such a character she could not remain in the church, even on trial. She however denied both the charges, and said if she had been expelled the church it had been since she left Lowell. She admitted that she expected to have been tried at Lowell, but had left the place before trial, at the advice of Mr. Avery. I wrote to him for further information upon the subject; and he replied that she had been tried for fornication and lying, and proved to be a common strumpet; that he had advised her to leave because she was a female, and that she was tried and expelled in her absence. He also said that she had been afflicted with the bad disease, and had been guilty of theft. On receiving this letter I told her the question was settled, and that she could not remain in probation in the church. She was much affected, and said that the charge of fornication arose from her having kept company with a young man who, having become offended with her, had neglected and slandered her; and that the charge of lying arose from her having said she had lost her certificate when she had not.

Cross-examined.—It is a general rule to re-admit offenders upon proofs of contrition and repentance; but there are cases in which I should not adhere to our rule in this respect. I may, and indeed believe I do, differ from many of my brethren on this subject, and I therefore do not wish them to be held responsible for my particular views of discipline.

27. **Timothy Paul.**—Maria S. Cornell called on me at Great Falls, and wished to board in my house; she said she did not belong to the church, though she was a Methodist at heart; that she had been deprived of the privileges of membership in consequence of slanders circulated against her by a young man who had kept company with her, and deserted her. She read part of a letter she had received from her brother in New-Orleans, to show that she was respected by her friends. She also said that Dr. Graves had slandered her; that being sick, she had called on him for advice, and he had closed the door, and insulted her, threatening to report that she had the foul disease, unless she complied with his importunities. She however confessed to have been guilty of fornication, but not until I had informed her that she could not board at my house. One of her confessions was, that when going from class meeting one night, a young man had made certain propositions to her, which

she at length acceded to for \$5. My wife being of opinion that she was a bad character, I requested her to leave the house.

Cross-examined.—I never had any apprehension of her committing suicide.

28. Thaddeus Bruce.—I first became acquainted with a young woman, called Maria Cornell, in the year 1822 or 3, at Jewett City, (Conn.) She sought and obtained employment in the manufactory there, and worked in the room of which I had the charge. She stated herself to be a member of the Congregational church at Bosworth. I had observed her come out of a vacant building two or three times late in the evening, accompanied by a young man, and spoke to her about it. She confessed that she had been led astray, expressed her contrition and her resolution to do so no more. Her conduct after this was no better, and she was dismissed the factory in about three months after she came. In the spring of 1824, I saw her again in Slatersville, where she passed by the name of Maria Snow; and when I called her Maria Cornell, she denied that it was her name, but afterwards came to me and said, she was sorry she had altered her name, but had been induced to do so for the purpose of concealing her residence from her parents, and because she once knew a pretty girl of the name of Maria. Her character in Slatersville was bad, and she associated with low company. In 1825 she joined the Methodist church there, and appeared to be very penitent. I left her in full connexion with the church, but she was subsequently expelled, and then applied for admission into the church at Pawtucket. Her character was generally bad.

Cross-examined.—The charge against her at Slatersville was keeping company and walking the streets with young men, whose characters were reputed to be bad. I admonished her, and she confessed the fact, but she confessed to nothing like fornication; I did not accuse her of this crime, nor did she admit that she was guilty of it. I met her occasionally in Pawtucket, at class-meetings.

29. Zilpah Bruce.—I am the wife of the last witness, (and having deposed to most of the particulars in his testimony, added) Maria Cornell was of rather small stature, had dark hair, dark eyes and red cheeks; and she said her age was then nineteen. I was satisfied from her appearance at Jewett City that she was pregnant; she looked large, and I mentioned this fact to a circuit preacher of the name of E. G. Taylor.

Chief Justice.—Has any fact come within your own knowledge against the chastity of the deceased?

Witness.—Chastity, Sir! I don't understand what you mean by chastity; her character was that of a loose young woman.

30. Philena Holmes.—I reside near Slatersville in Rhode-Island and knew Maria Cornell there in the year 1826. She requested to be allowed to stay at my house until she could get work. I asked her why she did not go home, she said first she had no home, and then she said the man who had married her sister, was first engaged to her, and she meant to be revenged on her sister, and had made the attempt to drown herself but prevented by the man she boarded with. She also said her sister was jealous of her. This was all the conversation she had with me.

Cross examined.—She did not tell me the name of the man that had prevented her drowning herself. She told me of but one attempt to drown herself; but did not tell me when or where it was made. She told me the name of the man who married her sister was Grindall Rawson. I stated this to my husband at the time. I have not stated it lately, except to Mr. Blake since I came to this place. I often mentioned it after the death of Miss Cornell, in Slatersville. Mr. Anasa Taylor of Northbridge, asked me if I was willing to attend court.

31. William Holmes.—In 1824 at Slatersville, I knew Miss Cornell; she called herself Maria Snow. Her character there generally speaking was not good. In July or August of 1825 she made profession of religion and was baptized in August by William Taylor. She confessed her sins and promised to reform. For a while after she seemed to do tolerably well, but she soon got off her guard. We reproved, and she confessed herself guilty of keeping company with improper persons, and of lewdness. After Mrs. Bruce came there, she went by both names Maria Snow and Maria Cornell. Baptized by name of Maria. She was dismissed from the church on the charges of fornication and lying. She was admonished by me and others. When she left Slatersville her character for chastity was bad, and she confessed herself guilty of fornication. She remained but a short time at Slatersville, after her expulsion from the church.

Cross examined.—The charge before the church in Slatersville, was not reduced to writing. Her character was bad while she was in fellowship with the church. The charges were preferred to me as class leader and I laid them before Mr. Rawson the minister, but not in writing.

32. Susan Walton.—I reside in Lynn, (Mass.) I was acquainted with Miss Cornell in Dorchester, in 1827, by the name of Maria S. Cornell. In conversation she stated to me, that in consequence of disappointment in marriage, she went to the river, with a bible in her hand to drown herself, but her courage failed her. She confessed herself guilty of profanity, but nothing more. She said she was tried before the church for profanity, but did not tell me the result. She was charged with theft before the church of which I was a member. She related nothing to me about that. She left Dorchester about three weeks after she was brought before the church.

Cross examined.—She did not tell me when, or where she attempted to drown herself. She said she was tried before the Methodist church for profanity. I did not at the time communicate the conversation. First mentioned it after the death of Miss Cornell, to Rev. Mr. Benner. She was acquitted before the church in Dorchester, for want of sufficient evidence.

33. Mary Hunt.—I reside in Milton. I first became acquainted with Miss Cornell in Dorchester, in 1827. She appeared strange or absent-minded. I told her once she appeared to be crazy; she said she had been told the same by others; that she had been disappointed in marriage, which produced a great effect on her, and that she had attempted to make way with herself. She said the man to whom she was engaged married her sister. She was well educated. Since she was charged before the church on theft, her character has been bad.

Cross-examination.—After that charge she has spent some time in respectable families in Dorchester on visits.

34. Rebecca Fuller.—I reside in Canton, Mass. I knew Maria Cornell in Waltham, between July and August, 1831. She told me she had been unfortunate, had no clothes nor money, and wished me to keep it secret from the Methodist people that she was at my brother's house. I found out afterwards that she had good and rich clothes. She showed me a number of letters, one of which was from Rawson; she said he lived in Providence, and had married her sister. The letter began as follows: "My dear sister Maria, it rejoiceth my heart exceedingly to hear you say you once more love God and continue with his dear people." I saw a copy of another letter to the Reverend Mr. Avery, in which she confessed her faults. She left our house in a strange manner; left her clothes and trunk with us, for which I reproved her; she burst into a flood of tears, and said we had many acquaintances in Lowell, and as my sister had gone there she feared on her return she would bring back the reports relating to her. She said her character was so bad that she was obliged to move from place to place. She was so affected that she could not read the copy of the letter to Mr. Avery, but gave it to me to read. It was a confession of her guilt. Shein it stated that when in Lowell she was unwell, and went to Dr. Graves to consult him. The first evening he could not attend to her, but requested her to call at 10 o'clock the next evening, which she did. On her entering his office he locked the door, put his hand round her waist, and told her she was a pretty girl. She told him he must not treat her so, as she belonged to the Methodist society. The next time she went to him, she showed him her certificate to convince him she was a Methodist. He threatened if she did not comply with his wishes to inform Mr. Avery that she had the bad disorder. The letter contained confessions of the charges that had been brought against her and prayed for forgiveness and pardon. She said she hated Avery above all flesh living, but loved the Methodist people as she did her own soul. She showed me a certificate from a church in Dorchester.

Cross-examined.—My testimony has not, to my knowledge, been by any one reduced to writing. I have told it to many, particularly after I saw Miss Cornell's death in the papers. I conversed with the Rev. Mr. Palmer about it.

Direct resumed.—I belong to the Baptist church in Canton.

THIRTEENTH DAY.

Monday, May 20, 1833.

35. Samuel N. Richmond.—I reside in Providence and am a dealer in dry goods. I knew Miss Cornell; her sister afterwards married Grindall Rawson. I never had but one interview with her, and that was in Providence nine or ten years ago. [The witness was here asked if he knew of her having committed a theft in Providence. The Attorney General objected to the question as being irrelevant to the issue. The question was argued by Randolph and Mason, who contended that the testimony was relevant as showing the moral condition of the deceased; that immorality had a great influence over all men, and occasioned many to commit suicide. The court asked Mr. Mason if he could refer to a decided case where such testimony was ever ruled in. Mr. Mason replied he had not such a case at hand; but that the question of sanity and insanity presented a broad issue, and opened an inquiry into the party's

life. Attorney General—The public prosecution has been very liberal in admitting testimony, but he thought he was bound to object to this testimony as irrelevant. He disputed the premises of the learned gentleman, that a person who nine or ten years ago committed theft, was more likely to commit suicide, than a moral man. If this act of theft is admitted to be proved, the prisoner may prove the whole history of the girl's life, from the cradle to the grave. The court decided that the evidence offered was irrelevant, and not admissible to show that the deceased committed suicide, but might be admitted to show a depraved and abandoned disposition. I saw Miss Cornell at Mr. Thurber's; her sister, who married Mr. Rawson, was present; Miss Cornell stated that she had taken goods from my store, which she would return or pay for, the amount of which was small. I staid with her about half an hour. I never knew any thing more about her. A part of the goods were restored. She admitted that she had stolen goods also from Mr. John R. Carpenter. The amount that she took from me did not exceed five dollars. It was full 9 years ago.

Cross-examined.—Mrs. Rawson was not in the slightest degree implicated in the affair. She was not then married.

36. *Charles Hodges.*—I reside in Providence, and have resided there ever since 1805. I am in the dry goods trade. In the fall of 1822, I saw a girl in my store, who called herself Maria Cornell; I suppose it was the deceased. She saw a piece of silk, and wanted a dress from it, but was not prepared to purchase, and I trusted her for it. Some time after the month of January, 1823, she confessed that she had taken goods from me. She did not say what articles she had taken or their value. At first she denied, then afterwards confessed she had taken all the goods which I had missed. She was in my shop half a dozen times, and would go to the back end of the shop and approach me as if she had something to communicate, when in fact she had nothing. At Pawtucket, when she confessed the theft, she would one moment cry and the next smile. I knew at the time that Mr. Rawson was paying his addresses to her sister.—Some of the articles I think were returned and the others paid for. The whole amount was from five to six dollars. She bore the character of a thief; that was her general character among our shopkeepers.

Cross-examined.—This is all I know about her. She said she was then visiting in Pawtucket when I saw her there. It was in the year 1823. I judge from recollection. I never saw her afterwards.

37. *Jonathan Cady.*—I reside in Providence, and was at the Thompson camp meeting. I went on Tuesday, in company with the Rev. Mr. Horton and the Rev. Mr. Avery. I overtook Mr. Avery at Mr. Cady's tavern, about 20 miles from Providence. I think Mr. Avery did not go on the camp ground that evening. I found him next morning at Mr. Elliott's, about a mile from the camp ground, about sunrise. I went on the camp ground. On Tuesday night I parted with Mr. Avery, about 20 minutes after sunset. I saw Mr. Avery several times on the camp ground on Wednesday. I saw him in the afternoon at the preachers stand, during the services, which commenced at 2 o'clock. I saw him and conversed with him in the evening, at the commencement of the services, which were at half past 7 o'clock. I conversed with him five or ten minutes, and he then went towards the stand. I did not see him after that time that day. I saw him on Thursday in the tents a number of times, but cannot say the hours. I merely saw him as I did other preachers that were there.

Cross examined.—I cannot tell how many times I saw him on Thursday. On Wednesday evening I conversed with him about the discourse of Mr. Griffin, who was then preaching. When I overtook Mr. Avery on the road when he was alone in the chaise; at Mr. Cady's he took in Mr. Horton's son and carried him to the ground, I don't recollect that Mr. Avery took any part on the stand in the religious ceremonies. He did not to my knowledge deliver any discourse to the congregation. Mr. Avery left the camp meeting on Friday morning in company with the Rev. Mr. Crandall. I left the meeting on Friday and I presume it broke up on Saturday morning.

Direct resumed.—Old Mr. Elliot lives about a mile from young Mr. Elliot's.

38. *Sophia Elliot.*—I am the wife of John Elliot, we live about three quarters of a mile from the camp ground. Mr. Avery came to our house about early candle light on Tuesday of the camp meeting. He did not go to the ground that night. He remained at our house that night and went on the ground between 6 and 7 next morning after breakfast. I did not go of the ground that day. He came back on Wednesday evening between 9 and 10. He and brother Sabins lodged together in one bed that night. I think they came together, but don't know. After breakfast on Thursday he went on the ground. I was there on the afternoon of that day. I did not see Avery

there. I heard one discourse and part of another. Avery came to our house on Thursday past 9, with Rev. Mr. Crandall; not much if any past 9. They both staid at our house that night and lodged together. They left my house on Friday morning for their homes. They did not at any time, before Friday, go to the camp ground in Avery's chaise. They left on Friday soon after breakfast. No female called on Mr. Avery at my house. I never saw or knew that there was such a person as Maria Cornell, until after her death. I know it to be a fact that females have the monthly sickness after pregnancy. It once happened to myself and to another person, on whom it continued three or four times. The person I spoke of was in ordinary health; so was I. This happened when pregnant with our first children. I had the return but once after pregnancy.

Cross examined.—My father Elliot's is a large half mile from our house and about a quarter of a mile from the camp ground.

39. *John W. Elliot.*—I reside about three fourths of a mile from where the camp meeting was held in Thompson. Mr. Avery came to my house between sun down and dark on Tuesday evening: I was at my father's when he arrived there, and went with him to my house; he did not go on the camp ground that night; I put Mr. Avery's horse and chaise in my barn; they were not afterwards used by him until he started for home. Mr. Avery first went on the camp ground between six and seven Wednesday morning; I went to the ground a number of times on Wednesday; I don't know that I saw Mr. Avery on the ground that day. He returned to my house that evening between 9 and 10. Peter Sabins was with him, but I cannot say whether they came in together or not. I do not know that he left the house after he came in. Sabins slept with him. He went on the ground soon after breakfast on Thursday between 6 and 7; I am not positive, but think Mr. Sabins went with him. He returned home on Thursday with Mr. Crandall not far from 9 o'clock. Mr. Crandall slept with him that night; they left my house in Mr. Avery's chaise next morning to return home, and did not come back.

Cross examined.—I was at my father's barn when Mr. Avery arrived at his house; I saw him first when he brought his horse to the barn; he wanted to stay there but the barn was full. I don't know whether Mr. Avery stopped any time at my father's before I saw him there; I was at the barn when I first saw him, Sabins is a preacher; I did not know Maria Cornell, and saw no one who went by that name; I did not see Mr. Avery with any female I did not know, on or near the camp ground; I do not recollect that Mr. Avery gave any reason for leaving the camp meeting on Friday, before it broke up.

40. *Gloe Elliott.* I reside in Thompson, about a quarter of a mile from the camp ground; my husband's name is David Elliott; Mr. Avery did not at any time during that camp meeting call for a room at my house; I do not know that Mr. Avery was at my house at any time during the camp meeting. I knew him, but did not see him at my house. Mr. Avery was formerly a minister on that circuit, and that is the way I knew him. [Here the court told Mr. Randolph that he must not put leading questions to the witness.]

Cross examination: There were a number of the methodist ministers and the society at my house during the meeting; but if Mr. Avery had been there, I think I should have seen him; he was on that station ten or eleven years ago; I had not seen him since he left the station up to the camp meeting. He preached on the circuit a year. He was often at my house then, and I attended his preaching.

Direct resumed: I once knew a female, nine or ten years since, who had her sickness a number of times, that is, three or four months after her pregnancy. The person lived in our house, and it impressed my mind as something extraordinary.

41. *Rev. Elias G. Scott:* I am a clergyman, and reside in Ashford; I was at the Thompson camp meeting; I arrived here the 27th of August, on Monday, the first day of the meeting, in the afternoon; I saw Mr. Avery first on the ground on Wednesday morning, between 7 and 8. I got a boarding place for him at a tent, where he could get refreshment; I think at the Plainfield tent. He said he should not stay on the ground at night. No recollection of seeing him afterwards on Wednesday until evening, when I saw him during the public services, near their close, in front of the stand opposite the encampment. It was probably about half past eight o'clock. I conversed with him some minutes, and did not see him afterwards that evening. I saw him on Thursday near the preachers stand, between 8 and 10 in the forenoon, and conversed with him several minutes. I saw him again in the afternoon at 2 o'clock, at the preacher's tent. He remained with me until the public exercises closed, probably half past four o'clock. I next saw him as early as 6, at the Weston tent. I left him

there as the sun was setting. The sun set at 36 minutes past 6 o'clock; there was a prayer meeting at the tent; he introduced the services there, and prayed twice. The meeting commenced as early as 6 o'clock; Mr. Avery was, I should judge, in the tent with me more than half an hour. On Thursday morning, between 8 and half past 10, I informed Mr. Avery that there were bad characters on the ground; he informed me that one of them was the Cornell girl whom he had expelled from the church at Lowell for lewdness. He told me under what circumstances he saw her on Thursday morning, and that when she cast her eye on him she dropped as though she had been shot; I don't recollect any further conversation about her. I inferred from his expression that she meant to conceal herself from his view. On Friday morning, soon after breakfast, I saw him in his chaise; don't recollect that any body was with him; he was then at Mr. Elliott's house. I conversed with him 15 or 20 minutes. I think he drove off and left me; he bid me good morning; I don't recollect that any person joined him.

Cross examination: I think the service on Thursday evening began at the usual hour, at half past 7. Mr. Avery came into the tent after I was there. I do not know where the Muddy Brook tent was; there was such a tent; I have no recollection of seeing him with any female that I did not know; I do not know Miss Cornell. My impression is, but I am not positive enough to swear to it, that I saw Mr. Avery on the ground on Thursday evening when the hornsounded. When I spoke to Mr. Avery about bad characters, I referred to females. I do not know that measures were taken to remove Miss Cornell from the ground. I received my information relative to bad characters being on the ground from the Rev. Mr. Merrill. I have known Mr. Avery for five years. I invited him myself to attend the camp meeting. (Here the witness described the various places where Mr. Avery had been stationed as a preacher.) I remained on the ground every night from the first night until the meeting closed.

Direct examination.—The first conversation I had with Mr. Avery relative to Miss Cornell, was two years ago next September. He mentioned the lewdness and other crimes of the Cornell girl. Mr. Avery's character is good as far as I have the means of knowing.

42. *Phineus Crandall.*—I reside in North Bridgewater; I was at the Thompson camp meeting; it commenced on Monday the 27th of August, and terminated the Saturday following: I saw Mr. Avery first at the meeting in the afternoon of Wednesday; I wished to see him to know if he could give me a seat in his chaise to Providence on Friday. I was with him 10 or 15 minutes; I saw him frequently in the course of that day; I have no recollection of seeing him particularly after that time until next morning. On Thursday morning proposed that I should leave the camp meeting with him that evening after the services, and go to sleep with him at Mr. Elliott's. The conversation took place about noon. I again saw him in the afternoon at or near the stand, at the close of the service, not far from 5 o'clock. I was with him but a few moments; I asked him to take tea with me at our tent, and he concluded to; he took tea with me; he left me a short time and came to the tent about half-past five. It was one of the Plainfield tents; we were then together about 30 minutes.

I do not know where he went from that place; I left him at the tent; I next saw him immediately after the close of the public exercises in evening about 9 o'clock. I am wrong, I saw him as I was going on to the stand at half past 7, and he agreed to meet me where he did. I preached myself that evening. When I came off the stand I found him waiting for me, and we went off the ground together to Mr. John Elliott's. There we conversed perhaps an hour before we retired to bed. We slept together. Mr. Avery was not absent from me after I came off the stand until the next morning. The next morning we got into the chaise and rode on to the camp ground. At old Mr. Elliott's I left the chaise and went on the ground to get something I had forgotten, and left Mr. Avery alone in the chaise. When I returned I got into the chaise with him and rode to Providence. I first became acquainted with Mr. Avery about 10 years ago. I have never known any thing against Mr. Avery's character. I have never heard any thing against his character until I heard he had murdered a woman. What I have heard of him has been favorable. When I knew him intimately, which was a few years after I became acquainted with him, his character was good. I have heard nothing against Mr. Avery's character until the present case.

Cross examination.—I first became acquainted with him in Connecticut. I have never known Maria Cornell. I did not at the camp meeting see Mr. Avery in conversation with any woman that I did not know.

43. *Abraham D. Merrill.*—I reside in Lincoln, Mass. I was at the Thompson camp meeting. I arrived in the morning

Tuesday the 29th of August. I saw Mr. Avery there on Wednesday morning from seven to half past seven: We were together but a few moments and had some conversation. I next saw him in the afternoon of the same day, probably from 4 to 5 o'clock: I named to him that Maria Cornell was on the ground: we expressed a regret that she was there, and agreed that it was our duty to inform the people at the tent where she boarded of her character: I think Mr. Avery must have complied with the agreement, as the people of the Western tent knew she was there, before I gave the information. Mr. Avery conversed with me about her expulsion from the church and the causes. The first I ever heard against Miss Cornell's character was at Lynn. Mr. Avery took tea with me at the Western tent; the tea hour was half-past 5. I don't know how long he remained there; I next saw him at noon on Thursday, and he dined at the Western tent with me. I don't recollect how long he remained there. Between 5 and 6 I saw him again near the Western tent, and conversed with him, was with him between 10 and 15 minutes. I also saw him at the Plainfield tent at tea, at about half-past 5. I left him there probably a quarter before 6. He was at the Western tent afterwards at a prayer meeting. I do not recollect which of us left that tent first. He was there at the sounding of the trumpet. I saw nothing more of him that evening. I saw him on Friday morning in his chaise alone, that was the last I saw of him. I have been acquainted with Mr. Avery for 9 years, intimate for the last 5 years; his character has been good since I knew him. Miss Cornell's character in Lynn was bad; she was there between 2 and 3 years since. I was stationed there; she said she came there to enjoy religious privileges, and wanted a place in my family; I got her a place where she stayed two or three weeks and was dismissed. She left the place without seeing me. She was received on a certificate into the church at Lowell over which I was. I knew nothing then against her character. I knew her character to have been bad in Lowell before I saw Mr. Avery at Thompson. I saw Miss Cornell at the Thompson Camp Meeting; at first I did not know her on account of her large green glasses. On Thursday she came to shake hands with me and said, brother Merrill will you forgive me; she was much affected, and said she believed God had forgiven her, and it would be a satisfaction to know I had forgiven her. I told her confession would not secure my confidence, nothing would do but a well ordered life. She left me. When I was at Lynn Mr. Avery was stationed at Saugus, and used frequently to pass my house, that is all I know about his rambling. He walked towards Nahant, which was a place of resort. Sometimes he would have his children and sometimes be alone, and from his passing my house frequently and not calling, I thought he was peculiar in his habit of rambling. I may have seen him pass so during the year I was at Lynn, a number of times in the course of each week. It attracted my attention. Recess till 3 P.M.

Cross-examination resumed. Mr. Avery was in the Western tent when I got there on Thursday; I saw him there at about sun-set, and he remained there all the time, until the horn blew at half past 7. I was not questioned on this subject in Bristol and said nothing about it. I think when I mentioned to Mr. Avery that Miss Cornell was on the ground, he said he knew it. I saw nothing improper in the conduct of the deceased while on the camp ground. I heard nothing against Miss Cornell while she was under my pastoral charge at Lowell; she was active at our prayer meetings. She was admitted to my church, a certificate from Dorchester. I know nothing but that Mr. Avery's temper is good. I may have said that in allusion to his preaching that he was a man of warm temperament. I have not said any thing against his temper in any other relation. The bad characters I alluded to were removed from the ground. I did not allude to Miss Cornell. I think Miss Cornell boarded at Muddy Brook tent. Mr. Avery was not present when Miss Cornell asked my forgiveness.

When I received letters pertaining to the church business, on leaving a station, I usually left them for my successor. I staid at Lowell, I think one year. I know of no charges against Mr. Avery, but a lawsuit against him for defaming the character of an individual. I have not seen and examined witnesses in this case very particular, out of court.

Direct Examination. Before Miss Cornell spoke to me at Thompson as I have before said, I had told the tent master she was a bad character. Letters of acknowledgment from an expelled member I should not consider as records belonging to the church. Mr. Avery was persecuted in Massachusetts for defamation of character; the subject was examined in an ecclesiastical council and Avery was acquitted. There have been no charges against Mr. Avery separate and distinct from the lawsuit referred to. Our practice is on leaving a station to destroy unimportant letters. A minister and a committee should decide on the sufficiency of a confession made before

confession made before expulsion, the minister would lay it before the committee or not, at his discretion. The minister can receive any person on probation.

44. *Rev. Henry Mayo*—I reside in Mansfield, Conn. and was at Thompson Camp meeting; I arrived there on Tuesday 28th August. I saw Mr. Avery on the camp ground on Wednesday morning between 7 and 8. I took him into the Weston tent, was with him most of that day, was with him and heard sermon, but don't know who preached. It was from half past 1 to noon. Saw him two or three times between then and night. He came into the Weston tent just before night and I think he took tea there. After tea I went to Mr. Elliott's and returned about 6 and found Mr. Avery there, and we remained together until the horn blew which was half past 7. When the horn blew he got up to go and asked me if I was not going to meeting. We went and staid outside of the congregation until the preacher had laid out his course; we then went into the preacher's tent where we staid until about half past 8. I saw no more of him that evening. I saw him on Thursday morning in the preacher's tent about half past ten. He came on the ground between 7 and 8. Brother Horton preached; we made some remarks on the sermon. Mr. Avery took dinner with us between 12 and 1 at the Weston tent. I have no recollection of seeing him but a short time after dinner. He must have been there from 12 till 2 most of that time. About half past 2 he again came into the Weston tent. He staid but a short time and went elsewhere to tea. I went to see to my horse and on my return he was in Weston tent. A prayer meeting was about closing. He remained there until half past 8 o'clock. We talked about *faith and grace*. I stepped out of the tent and my attention being attracted by something else, Mr. Avery came out without my seeing him; I passed towards the preacher's tent and saw him conversing with a man under a tree. I went on and before I got into the tent, Mr. Avery came there I think with brother Crandell. Before we went together into the tent, the sermon was finished; he went out of the tent and shortly after returned into it with brother Crandell, and shortly after they left it together. The preacher's tent was directly behind the stand. The Weston tent was about 10 rods off. From sun down until the close of the meeting at 9 o'clock, Avery could not have been out of my sight more than three minutes. I saw a person there on Thursday morning about 7 o'clock, who some one told me was Miss Cornell. I remarked to my wife she ought to be married to save her credit. The manner she walked and her clothes not being quite large enough to meet behind led me to that opinion. I did not see her in front. I saw her, as sailors say, rather quattering. She had the appearance of being pregnant.

Cross-examination—Her walk was irregular and not such as young ladies ordinarily had. Her clothes were open behind about half an inch. I cannot say there was any material difference from her common size. I did not know the ladies she was with. I think I have seen one of the ladies in this court house. I have seen her in town this day. Her name was Parmelia. I should have noticed Mr. Avery's absence from the tent 10 or 15 minutes that evening because we were together in the tent. Brother Palmer was also present in the tent; he went out and was gone about 15 minutes. On Thursday night he went out of the Weston tent but 2 or 3 minutes after the horn blew. I had never seen Miss Cornell before that meeting. My wife pointed her out to me. I reside in the north parish of Mansfield. I am acquainted with a gentleman by the name of Storrs. I had a conversation with Mr. Fuller in his presence relative to the trial of Avery. Mr. Fuller was always talking to me about Mr. Avery. He shewed me the trial, and I asked him what he gathered from it. He said he could get nothing. I ironically said the magistrates were not competent, &c. I had other conversations with him on the subject of the universal doctrine. Mr. Storrs said, then you think Mr. Avery ought to be acquitted guilty or not. I told him he misunderstood me. I said I was with Mr. Avery Thursday evening of the camp meeting. I am distantly connected with Simeon Mayo, and have known him ever since I was a boy.

Direct examination—Fuller said that justice would not be done Avery, because he was a free man.

45. *Betsy Mayo*—I saw Mr. Avery at the Weston tent on Wednesday forenoon. I saw him a number of times that day. He was at that tent at tea. He staid in the tent some time after tea; I cannot tell how long. I saw him Thursday morning in the same tent, soon after breakfast. I also saw him at noon, and in the afternoon before tea in the Weston tent. He did not take tea there, but returned directly after tea and staid until after meeting time. I think there was a prayer meeting in that tent after tea. He opened the meeting and prayed after it was opened. The prayer meeting was over before the candles

were lit. He remained there until the lamps were lit. I did not hear the horn that evening to my recollection. I saw Miss Cornell on the ground two or three times. On Thursday she stood before me at the meeting and I remember the remark my husband made the same as he has related. Miss Cornell spoke to me in the afternoon. She said the Lowell preacher is here, Mr. Avery. I said Mr. Merritt it also here. She said she had spoken to Mr. Merritt. I told her Mr. Avery was in our tent, and she passed away immediately. I went into the tent, and on being asked who it was I had been talking to, I replied Miss Cornell, and undertook to point her out to some person, but could not see her, and Mr. Avery by his looks, reproved me for having noticed her.

Cross examination.—Mr. Avery said something to me but I do not know what he said. I told him I was sorry for having pointed her out, after I saw that he disapproved of it. The persons she was with were strangers to me. I noticed no improper conduct in Miss Cornell. I knew Miss Cornell at Lowell. She was a member of the church at that time. While Mr. Merrill preached there, I knew nothing against the character of Miss Cornell. I saw nothing in the appearance of Miss Cornell at Thompson, that warranted the remark made by my husband.

46. *Rev. Samuel Palmer*.—I reside in Stoughton, Mass. and was at the camp meeting in Thompson, last August. I arrived on Tuesday. Saw Mr. Avery on the camp ground about half-past 11. When the exercises closed I went and spoke to him. I saw him again at the stand that evening soon after the exercises commenced, which was a few minutes past half-past 7. I saw him in the preachers' tent, sitting on a trunk, and afterwards, near 9 o'clock, I saw him passing off the ground alone. On Thursday, at noon, I saw him going into the preachers' tent. At 2 o'clock, I saw him in Grafton tent, and conversed with him. I remained there but a few minutes. I next saw him coming to the stand just after the horn blew, which was a little before half-past 7. A few minutes after I saw him conversing in the preachers' tent with brother Mayo. This was while they were singing. I went out and was gone about 15 minutes, and then returned and remained with him, until he left the ground with brother Crandall. I saw him next morning (Friday) in his chaise. He and Mr. Crandall came up to the camp ground; as they were passing from the preachers' tent to the chaise, brother Crandall said he had forgot his cloak. Mr. Avery said he must go and get it; and Mr. Avery got into his chaise alone and drove to the road where he stopped.

Cross examination.—I did not see Mr. Crandall get into the chaise. He went to the house after his cloak—Mr. Elliott's house. I cannot name who was in the tent on Thursday evening, except Avery, Mayo, and myself. Sanford Benton and others were there. I remember Mr. Avery, because I was directly by his side, and a good part of the time I had my hand in his. During the sermon some persons went in and out the tent. I don't recollect any conversation except with Mr. Avery, and but a little with him. I understood Mr. Crandall that he had left his cloak, but it might have been something else.

47. *Patty Bacon*.—I reside in North Woodstock, am 45 years old and have had 9 children. I was at the Thompson camp-meeting last August. I saw Maria Cornell there in North Woodstock tent; it was called Muddy Brook tent. She came into our tent on Thursday. Sister Waters said it was a girl; I said it was a married woman, or ought to be. I saw her change her dress, and I asked sister Waters to look and see. I looked over when her dress was off, and judged from her countenance and appearance. I saw her bosom. Her countenance looked as if she was pregnant. I cannot in particular tell the appearance of her bosom. Her countenance was pale and sickly. I did not observe her bosom. She said she was much out of health. I never saw before or since. She took off her spectacles and looked different with them off. She looked very unwell.

Cross examination.—I observed she was pale, before she went into the inner tent. Her eyes were black. I have known many females look pale that were not pregnant. From her pale face, dull eye, and not being very well, I judged she was pregnant. Many women do not appear so without being pregnant. Her bosom was rather full. I don't know she was any fuller than usual. I first informed the Rev. Mr. Jenison of these facts.—There is a great difference in the appearance of the bosoms of women who are not pregnant. I never told any person that some one inquired at the tent for Miss Cornell. I was not examined in Bristol. Mrs. Waters is in this town now.

48. *Anura Waters*.—I was in the Muddy Brook tent with Mrs. Bacon, when Miss Cornell passed through. I saw her and looked over the partition at her, when she was changing her dress. I thought it possible that Miss Cornell was pregnant, but I did not know. She had a pale countenance.

Cross examination.—I should have thought nothing about her being pregnant, if Mrs. Bacon had not made the remark. I did not know Mr. Avery.

49. **Polly Horton.**—I reside in Woodstock, and saw Miss Cornell at the Thompson camp meeting. On Tuesday she asked me if I knew where she could get a place to board. A young man came up to her—she patted him on the shoulders, and said she would have to go to Elliott's to board. He had on light-coloured pantaloons, palm-leaf hat with green lining, and blue coat. Not a tall man; thick set and full face. I do not know the man if I should see him. That was improper conduct.

Cross-examined.—I had nothing against the girl before she patted the man on the shoulders; I then left her. The young man asked her if he should carry her trunk to Elliott's. I don't know Mr. Avery. I have seen Mr. Rawson of Woodstock. I live a mile and a quarter from where he does. I have seen Miss Cornell at Meeting with his family.

FOURTEENTH DAY.

TUESDAY, May 31, 1833.

50. **Milton Daggett.**—I reside in Weston, and was at Thompson camp meeting last August. I first saw Mr. Avery on the camp ground about 7 o'clock. I invited him to board with me. I again saw him at noon, and at 4 or 5 o'clock, at Weston tent, where he remained about half an hour. He took tea at that tent. I again saw him on Thursday morning about 9 o'clock; he took dinner with me at 12, and stood about half an hour. Saw him again about half-past 5, at Weston tent, where he remained about 15 minutes; he went out before tea, and returned a little before 6, and opened a prayer-meeting, which continued, I should think, from half to three-quarters of an hour. I did not see him leave the tent that evening until after the horn blew. I do not know for a certainty that he was in the tent every moment of the time, from the prayer meeting until the horn blew. Mr. Mayo and his wife, my wife and Miss Whitney, were there present. The last I saw of him, he was assisting me to fix the tent. I don't recollect seeing him after that, until Friday morning, when he came to the tent, and bid me good bye; he then went to his chaise, and went off the ground alone, towards Mr. Elliott's.

Cross-examined.—I ascertain the time by the regulations of the meeting; tea hour was half past 5; but I cannot say the time of taking tea on Thursday was precisely half-past 5. We came as near that hour as we could. I do not recollect seeing Mr. Randall on Friday morning with Mr. Avery. I did not know Miss Cornell, and have no recollection of hearing of her at all during the camp meeting, either from Mr. Avery, or any other person. I am acquainted with Mr. Avery; he was stationed in Weston 20 months; he came there in 1827. I cannot recollect who was tent master. I was notified there were bad characters on the ground; it was known in the tent. Mr. Avery was, while at Weston, fond of good horses.

Direct examination.—The horn blew for the evening service at the Thompson camp meeting, a little before half-past 7. I am not a clergyman. I was the tent master of the Weston tent.

51. **Louisa N. Whitney.**—I reside at Waltham, Mass., and was at the Thompson camp meeting last August. I resided at Weston Tent. I was there on Thursday afternoon. Soon after preaching, Mr. Avery came to the tent and remained there until near tea time; he went out to tea, and was gone from 20 to 30 minutes; he then returned and remained in the tent until after the horn blew.

When he came back after tea, there was a prayer meeting, which I think he opened. He conversed with Mr. Mayo. After the horn blew, he went to the preacher's tent. I saw him at the preachers' tent. I saw him at that tent, but don't know that he went into it. On Friday morning he called to the tent, and bid us good morning.

Cross examined.—I did not see any one with him on Friday morning. I do not know Mr. Randall. I remember that Mr. Avery was in the tent all the time, as before said, because I sat next or near to him, and he took a part in the meeting. Mr. Barton was there, and I think he made one prayer; I judged from his voice. Mr. Daggett either made a prayer or exhorted; I don't know that he remained all the evening. I cannot recollect who else exhorted or prayed at that meeting. I did not see which way Mr. Avery went after he bade me good morning on Friday morning; I do not know whether Mr. Avery opened the prayer meeting by singing or praying; I heard in the tent that Mr. Merrill was very much tried by the appearance of a girl on the ground who had been expelled from the church in Lowell.

52. **Abby Hathaway.**—I reside in North Providence. Between 10 and 11 years ago Maria Cornell came to the Lyman mills and called herself Maria Snow; she said she was very

poor, and appeared much distressed; she had no clothing; he told me that her mother died of typhus fever at Norwich, Connecticut, and they had taken all her clothes to pay her doctor's bill; she left the place before we heard her real name. Soon after she left, I ascertained her name was Maria Cornell; it was but a few weeks after. She told me she had a sister in Providence by the name of Lucretia. With the money she made at the factory she purchased a suit of mourning for her mother. I have seen her since at the Methodist meeting in Providence, about 6 years ago. She then went by the name of Maria Cornell.

Cross examination.—I do not mean to say that I know of any criminal act of hers, or that she confessed any to me; her conduct was very unbecoming.

Direct examination.—She appeared to very intimate with a gentleman who called on her occasionally. Once when he called she put her arms round his neck; I knew the young gentleman he was in the habit of calling there; shortly after he went out into the new country. He was a respectable man; I do not know whether he is now living or dead.

53. **Joseph H. Ormrose.** I reside in Providence, and knew a young woman by the name of Cornell, a sister to the lady who married Mr. Rawson. About 10 years ago I detected her in stealing a piece of muslin, and she confessed the fact. I lived at the time as clerk with John R. Carpenter. She told Mr. Carpenter not to expose her, as she was about joining Mr. Wilson's church.

54. **Richard Chadwick.**—I reside in Providence, and drive the mail from Bristol to Providence, on Monday or Tuesday of the two day meeting in Providence last November. I carried Mr. Avery from Bristol, and left him between 4 and 5 at Mr. Wilson's in Providence. Mr. Jilcox resided nearly opposite Wilson's meeting-house on the west side of Providence river, on Broad-street, about three quarters of a mile from the bridge.

55. **Rev. Pardon Jilcox.** I live in Providence, opposite Wilson's meeting-house, a little over a half a mile from the bridge. Mr. Avery staid at my house during the four day meeting last November; he came on Monday evening just at night. This was the 26th November. After tea he went to prayer meeting with me, and when it was over we returned together, and he staid at my house that night. He did not go out after we returned; he came down stairs a little after daylight on Tuesday, and said he was going to prayer meeting. About sunrise he went out to go to the prayer meeting. I saw him cross the street. Chesnut street leads to the Methodist meeting-house. I saw him turn the corner of that street. I went down the street and returned a little past 8, say 10 minutes past 8; when I passed the Universalist meeting-house it was 5 minutes past 8. That is a short quarter of a mile from my house. When I got home Mr. Avery was at my house; my family were there; also Mr. Jilcox and his wife. Avery remained, I should think, until a few minutes after half past 8. He took breakfast at my house; a few minutes after half past 8 he left my house alone, observing he had an errand at brother Palmer's with brother Hathaway, and that brother Jilcox would attend prayers with us. I believe I did not again see Mr. Avery until evening at prayer meeting; he staid at my house that night, and left, I think, next morning for Bristol. I, on reflection, think it was on Tuesday he left my house. He left my house the day before Thanksgiving, and it must have been Wednesday; he staid in the afternoon. We preached in the forenoon of that day, as I understood.

Cross examination.—I first thought he left on Wednesday morning, but it was in the afternoon; I know it was 5 minutes past 8 when I passed the Universalist meeting-house on Tuesday. I passed on Wednesday morning about the same time; I cannot say whether 5 minutes earlier or later; I cannot tell what time I passed the Universalist clock on the Priney following. A week ago last Friday I passed that clock at 11. I noticed because I was coming to Newport in the boat. A week ago last Monday I passed it at half past 7. I cannot name any particular day two months ago when I passed and noticed the time of day by that clock. I certainly think it was half past 8 when Mr. Avery left my house on Tuesday morning.

Direct resumed.—The Fall River boat usually lies a quarter of a mile below the bridge. I should think it near a quarter of a mile from my house to the Methodist meeting-house; Mr. Fuller does not live more than 200 feet from the meeting-house, and about the same distance from my house that the meeting-house is.

Cross examination.—It would be rather to get from my house to the Fall River boat over the Ferry than round by the bridge; I am on the lower ferry; the upper ferry would have shortened the distance about one third, but I think the ferry boat was not running at that time or he went.

56. **Samuel Boyd.**—I live in Providence, and first saw Mr. Avery on Tuesday of the four day meeting about sunrise, in Chesnut street, near the Methodist meeting-house, going toward Smith's out two thirds of the distance from Mr. Jilcox's to the meeting-house. I roughly said good morning to him as I passed him. I met him about 10 o'clock in the fire room in the Methodist vestry; I was there before the meeting commenced, and my impression is he came in after I got there; I think he positive. The meeting began about 10 o'clock, I cannot say exactly at 9; it was supposed for 9. I saw Mr. Avery during that meeting in the altar, sitting near Mr. Merrill, the presiding elder. The prayer meeting broke up about half past 10, and immediately after there was preaching. I did not see Mr. Avery leave the house; he was there when I left, about 20 minutes before 11 o'clock. The meeting was held in the vestry. The preaching in the forenoon was in the vestry. Mr. Avery was present in the altar when the prayer meeting broke up.

Cross examination.—I can say it was not 10 minutes after 9 when I saw Mr. Avery at the prayer meeting. I know when I went there, and the meeting commenced soon after; it was but a little before 9 when I left my house for the meeting-house, and I am quite sure it was not more than 5 minutes before 9. I do not say my time before I left home. I thought I arrived at the meeting-house about 6 minutes

on the wharf, and he replied on board the boat just as he was going to the engine, and that he told him he could put the letter into the box; Mr. Avery said, in answer to this, that he had never been on board his boat but once, and that was on one occasion when he came to Providence. Mr. Avery asked him if he was confident enough to swear he was the man, and Orswell replied he should not like to swear positively; he also said that when he heard Mr. Avery was a tall man, with black hair and dark eyes, he thought he was the same man from whom he had received the letter; and added, that the time he received it was about half-past nine o'clock in the morning, when he was preparing the engine to start. Mr. Avery next enquired if the man wore spectacles, and Orswell said he thought not. When the spectacles were brought, and Mr. Avery had put them on, he said he did not resemble the man so much as he did before.

Cross-examined.—Did not Orswell say when Avery asked him if he was confident enough to swear he was the man, "I am not confident enough in my own mind to be certain of it?" A. I do not recollect whether he used exactly those words; I do not recollect, but I think I said "he should not like to swear he was the man;" I may have stated that he used the other expression.—William Orswell said Mr. Avery did not so much resemble the man when he had his spectacles on. Mr. Avery said he had not been out without them for two years past, and some persons present said they had not seen him out without them.

Adjourned to Wednesday.

FIFTEENTH DAY.

Wednesday morning, May 22nd.

63. **Elias Smith.**—I reside at Providence and follow boating. I keep the ferry from the Steam Factory Wharf on the west to Captain Gladdings on the east, which is 2-3 of the distance from the bridge to where the Fall River steam-boat lies. In the latter part of November last, I think there was no other ferry kept up. My impression is, that the ferry above was discontinued about the first of that month. I might say it was never regularly kept up. On the 27th I attended my ferry. I had then no particular acquaintance with Mr. Avery, but I think I knew him by sight. He did not pass my ferry that day. I have no knowledge of his having done so since.

Cross-examined.—I had previously seen the prisoner at Providence Meeting house, and had heard him called Mr. Avery. My reason for knowing that I attended the ferry on the 27th, is, that it was during the four days' meeting, which commenced on Tuesday. I attended the ferry only between meetings; and if Mr. Avery had passed at any other time, I could not have known it. My father (Rufus Smith) attended while I was at meeting. I went to the sun-rise meeting that morning; on returning I ate breakfast, which took perhaps ten minutes, and immediately went to the wharf. It takes three minutes to cross at my ferry. It was possible to have crossed at the upper ferry in November, though I think it would have been difficult to have procured a passage. People don't like to lend their boats to boys, and the men are usually occupied. The river at that place is from fifty to sixty rods wide. The ferry is from Butler's wharf to the old packet wharf—a wharf or two below where the Fall River steamboat lies.

Direct.—From the sun-rise meeting, after eating breakfast, I went immediately to the wharf. During the whole four-days' meeting I attended ferry between, and my father during, the meetings.

Cross.—There are two boats belonging to the ferry: my father attends one and I the other. When one of us is absent, only one boat is used. There did not an unusual number of persons cross during the four-days' meeting.

Direct.—It is farther, I should think, from Pardon Jillson's to the Fall River steam-boat crossing by my ferry than by the bridge.

Cross.—But if you start from the Methodist Meeting house, the distance is about the same either way.

64. **William Henry De Wolf.**—I reside in Bristol. The morning of the 20th of December last was cold—wind rather high, blowing about West, but baffling from North to South of west, half a point. I noticed this, because my brothers were going to sea that morning. Between twelve and one, the temperature began to grow milder, and the wind continued to fall till about 9 o'clock. Along in the afternoon it was about west and by south, blowing a four-knot breeze. The banks towards the west were a little thawed towards night.

I follow the whaling business. It is my practice to keep a file of the letters I receive. On the 19th of November last there was 6 cents postage charged to me, but I find no letter of that date on my files. I find a bill of hoops dated at Fall River on the 14th, [produced,] from Mr. Burden, my correspondent at that place. The hoops arrived on the morning of the 15th by the sloop Katharine, but no bill came with them. I remember this because we were put to inconvenience in repacking the

hoops without the bill. It was not received on the 16th, unless late at night. The appearance of the bill impresses me with the belief that it came in the shape of a letter, the outside of which has been torn off. Understand me, I do not know that I received it on the 19th; but I believe it must have come to hand after the 16th. I cannot be positive when I received it, since impressions are not to be taken; at the same time I can find no other letter which I know to have been received on the 19th. I received letters from Providence on the 15th, and the other on the 17th, [the first and a copy of the answer to the second produced,] which I know to have been 6 cent letters, because that is the postage from that place.

Cross-examined.—The Steamboat King Philip passed from Fall River to Providence every day last November. I have had letters by her from the former place, both by mail and packet, but there is no fact in my memory enabling me to decide by which of these means I received the bill; all I can say is it did not come by the sloop. The bill is endorsed in the handwriting of G. Death, Cashier of the Bristol Co. Bank, who was then my clerk. Of my own knowledge I do not know that I received any letter of 6 cents postage on the 19th of November. I keep a thermometer, but I did not observe how it stood on the 20th of December. The weather was mild—that is, not blistering; and the temperature was neither very warm nor very cold. I do not recollect seeing any steamboat in the harbor that day.

65. **H. Potter Dimond.**—I am a weigher and measurer in the Custom House at Bristol, and usually assist Mr. Dewolf in getting his whale ships ready for sea. I was so employed in November last. I cannot tell precisely the day he received the hoops from Fall River. I believe it was the 15th. I asked him for the bill, but it had not come; and we were employed that day and the next in repacking the hoops without the bill. [Not cross-examined.]

66. **Susan Smith.**—I live in Bristol. On the morning of the day before we heard of the death of Sarah Cornell, I saw Mr. Avery pass by in company with Mr. Lawless. He had a handkerchief wound round his hand, with the ends swinging in this manner. I have frequently seen him pass by, but never with Mr. Lawless before or since. I do not recollect the day or the month. [Not cross-examined.]

67. **Susan Moore.**—On the morning of the 21st of December last, I saw Mr. Avery pass by our house in company with Mr. Lawless. My mother (the last witness) called my attention to them. Mr. Avery was swinging a pocket handkerchief loosely in his hand; it did not appear to have any thing rolled up in it.

Cross-examined.—They had already passed the second window when I looked out. I had no motive to notice particularly whether it was a bundle or not.

Direct resumed.—It is my impression it was not a bundle, and had nothing rolled up in it. My mother had a better view of them as they passed; she is 76 years of age.

68. **Nathaniel Bullock.**—I reside at Bristol. When Mrs. Sarah Jones was at Mr. Avery's, I was present, having gone with her to see if her testimony would be material to his defence. I asked her, on the 20th of December last, she had seen a stranger on Rhode Island, and what was his appearance. She said that she had, and spoke of him as being a tall man, dressed in dark clothes, with a large hat, or a hat larger than common. She said it was unusual for strangers to pass that way, (or something to that effect) and that she noticed him particularly, because she thought it was her brother, who had been absent some time, and lived down east. I asked in what direction he was, which way going, and whether he was receding from or approaching her; and for clearness marked out with chalk on the floor the relative positions of the house where she stood, the lane passing by it, and a certain gate opening from the lane into Captain George Brownell's meadow, according to descriptions she gave me. She said he was coming towards her in the lane, and that he approached within ten or fifteen rods, and then passed through the gate to the left, into the meadow. When Mr. Avery came into the room, she was asked if he was the stranger she had seen, so which she replied that he seemed to be the same, but she could tell better by seeing him out doors at the distance at which she had seen the stranger. In the course of the interview he went out to give her an opportunity of seeing him at that distance, and on his return she said he seemed to be very much like the stranger she had seen, or that he seemed to be the same man; that like him he walked a little stooping, was about the same height, had on similar clothes and hat, and when he stopped and looked round, he acted very much as the stranger did at the gate. Mr. Avery also put on his spectacles but she might see him both with them on and off. After hearing what had passed, I told him that she was a material witness and must be examined. She objected to going to court on ac-

count of the situation of her family, but I told her to come on a certain day to Mr. Burgess', and that her stage-fare should be paid. In the course of the interview she said to Mr. Avery, "that stranger passed through the gate; what color was it?" He answered that one part of it, or one post was whiter or lighter than the other—quite a different color. She looked up and smiled and said, "well, it is." Neither Mr. Avery or any one else in my hearing requested her to keep these things secret, nor was any thing said about secrecy. The conversation took place down stairs in the south-west room. We also conversed about the time of day at which she had seen the stranger: she said her impressions were that it was on the afternoon about the time when the family were about taking dinner and tea together, but that she could ascertain this from one of the Miss Anthonys who was present at the time. She gave no description of the coal mines or of the localities in the neighborhood. The conversation occupied perhaps half an hour; I staid there a full hour, and left her at the house. She attended the Bristol examination, but not till the last day, I think, when process was sent for her. Her testimony agreed with what she had stated at Mr. Avery's excepting as to the time at which she saw the stranger, which she testified was between 11 and 12 o'clock. On the afternoon of Christmas day, Mr. Burden and Col. Hamden called at my office and wished to see Mr. Avery. Understanding there was a crowd gathering round his house, I went there, and saw something like 40 or 50 people in the lane within 50, or perhaps 100 feet of the house. I felt alarmed, and requested Col. Hamden to prevent them from doing mischief. He stopped among them and proceeded to the house. I was alarmed for Mr. Avery's safety and meant if I could, to prevent violence, and at the same time avoid it. The people staid till the boat of the Fall River Steam-boat rang, then went away. I was present at the Bristol examination. After Mr. Avery's discharge I offered in his behalf, in the presence of Col. Hamden and others from Tiverton, that he should be continued in custody until measures could be taken to effect his recognizance in any reasonable sum, if any one required it, as he did not wish to start from an investigation. Col. Hamden said he could give no answer until he had consulted the Fall River people, but did not object on account of there being no process to support the proceedings. I had already communicated Mr. Avery's wish to Judge Randall to have the hearing before him in case a further investigation should be required, in order to put in bail; and I offered that he should be continued in custody till Judge Randall or some other Judge should come to take the recognizance when there were persons ready to enter into it. Observing the excitement which prevailed when the result of the examination was made known, I called on Mr. Avery, and told him I did not think it would be safe for him to stay in his house that night. He said it would be inconvenient to stay from home as his wife was unwell. When I left him he seemed to have concluded not to stay, but whether he did or not I only know from hearsay. He was discharged on Monday: on Tuesday, hearing of the feeling that prevailed at Fall River and that a meeting of the citizens had been called, I urged him to go away for the present—not to escape from justice, but to wait till the excitement should subside and a fair investigation could be had. He objected strongly to going, and said he would rather stay and live down the excitement. I left him however under the impression that he would go that evening; but on passing his house the next day I saw him through the windows, shaving. I went in and again urged him to go. I told him that although Colonel Hamden and other respectable men, of course, would not sanction violence, yet I thought his life in danger from an excited populace; that at any rate he would run the hazard of being committed to prison as his witnesses had gone home; that his best way would be to go and remain concealed until within a fortnight of the session of the court, and that in the mean time his friends and counsel could be preparing for his defence the same as if he were present. He took a memorandum of the time the court set and said, that his friends had assisted him and he felt under obligations to follow their advice, but knew not where to go. I advised him to go where the family who received him should be the only persons privy to his concealment. This was the last conversation I had with him. After his departure from Bristol and before his arrest, preparations were in progress for his defence before this court, in which both Mr. Blake and myself were concerned.

Cross examination.—I made the chalk marks indicating the road gate and house, from Mrs. Jones' description alone. I do not recollect the particulars of her testimony, but it was different from what she had told me. At Bristol she swore that her impressions were that she saw the stranger on the island in the forenoon between 11 and 12 o'clock, while at Mr. Avery's she said it was near the second meal in the afternoon. I saw no attempt at violence among the people collected round Mr. Avery's house, but I was fearful of it. I received information from Mr. Staples on Friday after Mr. Avery's discharge that Judge Randall would attend to taking bail for him; but having private business to attend to, and doubting whether I ought to consider myself as Mr. Avery's counsel, I signified as much to Mr. Staples, and added I had no doubt Mr. Randolph would attend to the business. I do not recollect saying to Mr. Staples that Avery was beyond the jurisdiction of Rhode Island. I had advised him to conceal himself where he would be forthcoming on short notice. I knew not where he had gone, but supposed he was at Boston. My knowledge of the excitement prevailing at Fall River was from rumour. I heard from there every two hours, but could not name one in twenty who told me. A great many violent things were said such as that Avery ought to be hung without judge or jury. I heard these reports both before and after Avery left Bristol. Among those I conversed with were Mr. Bartlett, Mr. Warren and Governor Collins. The latter said that great excitement prevailed on the island also, but do not know whether he told me so before Wednesday or not. The day after Avery's discharge, Col. Hamden requested me to get a copy of the Justices' opinion to read to the people at Fall River. I did not state to him on Christmas day that there was nothing improper in the people going in that manner to Avery's house. I have some recollection of his introducing some one to me, but not in the lane. I don't profess to be a soldier and was agitated. I did not mean to be understood that I Col. Hamden said there was no process to forward the recognizance on, when I proposed Mr. Avery's remaining in custody. Something of the kind, I believe, was afterwards said, but at the time he merely stated he could give no answer till he had consulted the Fall River people.

Direct resumed.—Previous to the conversation with Mrs. Jones, had not Mr. Avery described his route on Rhode Island and given you a precise account of its localities; and did not his description agree with the chalk marks made by you? [The Attorney General objected to the declarations of the accused being proved by his own witness. Mr. Mason. The woman by her testimony left the impression that Avery requested her to give these facts for his information in regard to the localities of the island, and requested her to keep it a secret. The insinuation intended is, that he thus came by the materials for the account he gives of his travels on the island. Our object is to impeach her testimony. Attorney-General. We rely on the established rules of evidence. No doubt it might often be very convenient to impeach a witness by illegal testimony. The Court refused to admit the testimony.] Previous to the conversation with Mrs. Jones I had sent a person to enquire of her whether she saw a stranger on the island on the 20th of December, and had received information that she did. I think Mr. Avery had not yet entered the room when I made the chalk marks. My object was to ascertain her means of knowledge, and whether, at that distance she could have seen so distinctly as to identify the man if she should see him. The information I sought was for myself and not for Avery. The conversation was between myself and her, and there was nothing said about keeping it a secret.

Cross resumed.—I don't recollect whether preparations for Mr. Avery's defence were commenced previous to the issuing of new process against him on Friday after his discharge. I was his Counsel at the examination, but am not here, though I have consulted with Mr. Blake and Randolph about the case. Recess till 3 o'clock.

Direct resumed: I intended to communicate Mr. Staples's proposition to Mr. Randolph, but I considered it at an end when I found the warrant had been issued for Mr. Avery's apprehension. There was then no particular reason for the communication, and I believe I did not make it until I saw him the next week on his way to or from the General Assembly.

Cross. It was a matter of rumour on Friday that there was a warrant out, but I do not know who told me. I have corresponded and consulted with different persons on this case, but have not been retained as counsel, nor do I take the labour or responsibility of counsel upon me. I do not recollect telling Mr. Howland I had not advised Mr. Avery to go away, and was not accountable for his absence.

Direct. I was in company with Mr. Mason once, but nothing was said about this case.

Ex. Rec. John Bristol.—I reside in Bristol.—On Christmas day, hearing the Fall River people had come over to take Mr. Avery, I went to his house, and found him in the custody of Mr. Pall, the Deputy Sheriff. The house was presently surrounded by people. We were all alarmed, and Mr. Pall told Mr. Avery to go up stairs. I saw him no more until the day after his discharge, when, having learned how great the excitement was at Fall River, I advised him to leave Bristol for a time. I did not see him again until after his arrest. [Not cross

examined.]

70. *Wm. Simmons*.—I live in Bristol. I went to Rhode Island on Christmas-day, Mr. Avery went up stairs. I do not know what Judge Pearce was there. You could look into the back yard from the kitchen window. Mrs. Jones, Mr. Bullock, and Mr. Blake might have been in the other front room before they came into the one I was in. Mr. Avery had only one surtuit—the one he has on now. I never saw him have a cap.

Cross resumed.—I do not recollect hearing any thing said while Mr. Jones was at Mr. Avery's, about his having been out for her to look at him. When the people came to Mr. Avery's on Christmas-day, I did not call for help; I do not know whether they went out of their own accord, or were turned out. I never knew Mr. Avery to have a pea jacket.

72. *Peter Gladding*.—I live in Bristol. About a week previous to the death of Miss Cornell, I put varnish on Mr. Avery's knuckle, where the skin had been knocked off, in order to cure it. [Mr. Randolph said this was introduced to account for Mr. Avery's having a handkerchief wound round his hand on the morning of the 21st.] This was at our house.

Cross-examined.—Between the time I put on the varnish, and the 21st of December. I saw him in the pulpit, and he had no handkerchief round his hand.

Direct resumed. He slept at my house on the night following his acquittal at the examination.

Cross resumed.—I know nothing about Mr. Avery's leaving Bristol.

71. *Mary Davis*.—I live in Bristol. I was at Mr. Avery's when Mrs. Jones came there with Mr. Blake and Mr. Bullock. Soon after their arrival, Mr. Blake enquired of her about the stranger she had seen on the Island; she said Mr. Avery appeared to be the man she then saw. Mr. Bullock marked out the road and the gate and her house on the floor, with chalk. She asked Mr. Avery what colour the gate was; he said one side of it was white; she then smiled and said it was. Mr. Blake said she would be an important witness, and Mr. Bullock told her to come to court on Wednesday. She said nothing about the stranger's dress. Mr. Blake and Mr. Bullock left her at Mr. Avery's. I was present all the time she was there, which was about an hour. She did not go up stairs. I heard nothing said about keeping a secret. The chaise came for her while she was at tea. Mr. Avery went out with her to it; I was within hearing; no conversation passed between them. I heard nothing said about coal mines; I think she said more than once that Mr. Avery looked like the man she had seen.

Cross-examined.—I had been for a week before staying with Mrs. Avery. My sister lives in the same house. Mr. Avery wore no whiskers any more than he has now.

Direct resumed.—On Christmas day, while sitting at the window, I saw a great number of people coming up the lane. I went into the back room, and was told they were from Fall River. When I went back, there were several of them, perhaps 12 or 13, in the house, who had come by the back door. I went and got Mrs. Avery to go into another room. We were all alarmed. Some of them stepped before me and prevented me from passing through the door; I asked them what they wanted, they said they wanted Mr. Avery and would have him, dead or alive. One of them went into a room below stairs, where Mr. Avery had been, but he had gone up stairs. They were in the house about 15 minutes, and around it half an hour. Mr. Paul and Mr. Tinney were there; I did not see Mr. Ors well in the back room; I do not know who turned them out of the house. I saw no guns or sticks.

Cross resumed.—I never stated the conversation with Mr. Jones to any one till I came to Newport. I then told Mr. Blake of it. During the examination at Bristol, I told Mrs. Downer, that she (Mrs. J.) was an important witness for Mr. Avery. I heard her say several times, without being asked, "he looks very much like the man." I said, "you must have took particular notice of him;" she said she had. Mr. Avery did not, while I was there, go out for her to see him at a distance. He might possibly have done so before they came into the front room where I was. Mrs. Jones, Mr. Blake and Mr. Bullock came in together from the entry, as if from the front door, a little before Mr. Avery, who came in at another door from the back room. I think he spoke as though he saw them there for the first time. I was present all the time afterwards until Mrs. Jones went away. I do not know with whom, or how Mr. Avery left Bristol; I have heard he went on Wednesday, and I first missed him in the afternoon of that day. I saw no horse and chaise drive up to the door. On Friday, the 21st of December, I visited Mrs. Gladding, in company with Mr. and Mrs. Avery. Mrs. Avery was not well, and had not been the day before; she also said her children were not well. I knew Betty Hills; she came with Mr. Avery's family to Bristol, and went away the 20th of September. She was middle aged, and lame. I never knew Mr. Avery to have but one cloak, which was a black camblet.

Direct resumed.—When the crowd came about the house on Christmas-day, Mr. Avery went up stairs. I do not know what Judge Pearce was there. You could look into the back yard from the kitchen window. Mrs. Jones, Mr. Bullock, and Mr. Blake might have been in the other front room before they came into the one I was in. Mr. Avery had only one surtuit—the one he has on now. I never saw him have a cap.

Cross resumed.—I do not recollect hearing any thing said while Mr. Jones was at Mr. Avery's, about his having been out for her to look at him. When the people came to Mr. Avery's on Christmas-day, I did not call for help; I do not know whether they went out of their own accord, or were turned out. I never knew Mr. Avery to have a pea jacket.

72. *Peter Gladding*.—I live in Bristol. About a week previous to the death of Miss Cornell, I put varnish on Mr. Avery's knuckle, where the skin had been knocked off, in order to cure it. [Mr. Randolph said this was introduced to account for Mr. Avery's having a handkerchief wound round his hand on the morning of the 21st.] This was at our house.

Cross-examined.—Between the time I put on the varnish, and the 21st of December. I saw him in the pulpit, and he had no handkerchief round his hand.

Direct resumed. He slept at my house on the night following his acquittal at the examination.

Cross resumed.—I know nothing about Mr. Avery's leaving Bristol.

73. *Clarissa Monroe*.—I reside at Bristol, in Main-street, near the residence of the late clerk, on the opposite side. On the 21st of December, near sunrise, Mr. Avery passed my house; he was alone, and had nothing in his hand. I saw Mr. Lawless coming down from the lane as he passed by the bottom of it.

Cross-examined.—I saw nothing in his hand. He was dressed in a dark surtuit. I did not notice whether it was buttoned, or that he had a handkerchief tied round his hand.

74. *Andrew Brownell*.—I live in Portsmouth, close by the coal-mines. Q. At what time of day on the 20th of December did you see Stephen Brownell (the father of Mrs. Jones) come from the mill? [Mr. Randolph stated his object to be to contradict Mrs. Jones's testimony. The Attorney-General observed, that the time of Stephen Brownell's returning from the mill was a collateral fact, wholly disconnected with the case and insisted, that, when such a fact was elicited in the cross-examination of a witness by a party, he could not bring evidence to controvert it.]

Prisoners's Counsel.—Mrs. Jones stated that her father went to mill in the forenoon, as her reason for saying that she saw the stranger on the island in the forenoon. The latter is the material fact; and when a witness fortifies such a fact by others which are immaterial, we surely have a right to contradict them, even though elicited by cross-examination, in order to weaken the testimony as to the material fact.

Attorney-General.—If the stranger was seen by Mrs. Jones in the morning, he could not have been Mr. Avery. The real object of the Counsel, therefore, is not to destroy her testimony, as is pretended, but by controverting a collateral fact in the face of rules of evidence, to change the rest of her testimony to evidence of a fact which they wish above all others to establish. The Court admitted the English rule to be such as stated by the Attorney-General, but doubted whether this case came fairly within it, and decided to admit the testimony.] After I had been to tea that day, a little past 3 o'clock, I met Stephen Brownell (the father of Mrs. Jones) coming from the mill, between Thomas Brownell's and where I live, and conversed with him two or three minutes. He was on foot, and had a grist of meal on his back. I have a clock in the house, which struck three just as I got up from the table after taking dinner and tea together.

Cross-examined.—From the coal-mine gate to the ferry is a mile and a half; that gate is of a wood colour; it is about ten feet from Brownell's (my) gate, and twenty rods from George Brownell's gate, which is generally whitewashed every year; it has been whitewashed this spring, and I knew the side next he road was white about the 20th of December last. I was not at the coal mines that day, but was much of the time within twenty rods of them. I saw no stranger any where that day. If a stranger had passed while I was at home, I should have seen him. I never saw Mr. Avery till the examination at Bristol. I went to mill at 12 o'clock that day—came back at two, and remained till dinner and tea; the clock struck three just as I got up from table; after that I saw Stephen Brownell, as I have before stated. My house is perhaps a foot and a half from that of Mrs. Jones. [These tenements join; the coal mines are about twenty rods to the north, and the white gate the same distance south of it.]

75. *Sally Swan*.—I live in Bristol. During the examination there, two days before the government got through with

their witnesses, I conversed with Annis Norton of Trenton. She said she had come over to testify against Mr. Avery; that she believed he was the man she had seen pass her house that he ought to be hung, and that if she could do any thing to help it she would. She said she had once seen Mr. Avery; it was between daylight and dark, just as he was going into the chapel when he first came to Bristol. She described the man who had passed her house as a tall slim man, with a dark suit and broadbrimmed hat, dark complexion and eyes, and a large pair of black whiskers. I asked if he wore his shirt collar up; she said he did; that it looked as if he had worn it a good while, and was very dirty. She said she had been told Mr. Avery had altered his appearance by changing his dress and shaving off his whiskers; she said the man passed her house about half after 2 in the afternoon.

Cross-examined.—This was before Miss Norton was examined at Bristol, and was in the presence of her sister.

76. Jane A. Sprague.—I reside in Bristol. On the evening previous to Miss Norton's examination, I conversed with her. She said she saw such a looking man come over the bridge on the 20th December in the afternoon; that he had on a dark box-coat, and she thought he had whiskers; that she thought she had seen him before, one evening at Bristol, in Rhode Island.

Cross-examined.—I think she said he was a tall man, with a broad-brimmed hat; and that she took him for the minister at Portsmouth or Bristol.

77. David Duval.—I reside at Portsmouth, and am a blacksmith. Last winter I worked at Tiverton, not over 20 rods from the bridge. I was at work on the 20th of December last, and quit a few minutes past eight by Mr. Hambley's watch. I crossed over to the island on the bridge, as far as the gate, where I got down on the south side, and went around the gate, walking 3 or 4 rods on the beach. My shop stands between 2 or 3 rods from the road passing up to Tiverton. I knew Mr. Avery previous to that time; I had seen him at a four days meeting on the island, during which he took tea with me. I did not see him pass that afternoon; if he had passed, I don't know but I should have seen him; I saw several others pass, some of whom I knew. I was in the habit of passing round the gate at night—not to avoid the toll, which I paid Mr. Cranston by the week—but because it was more convenient than waiting to have the gate opened. On Christmas day I had a conversation with Mr. Cranston; he said he knew Mr. Avery, having once seen him pass the bridge with Anthony Steward, in the four o'clock stage, and at another time with Wm. E. Cook. He said if Mr. Avery had passed that day he should have known it, and he had no idea that he did pass that day. During the four days meeting at Portsmouth, on the 7th, 8th, or 9th of November, Mr. Avery, Mr. Holway, and myself went to the top of Butt's hill, about 40 or 50 rods from Mrs. Cook's.

Cross-examination.—I went round the gate every night except the 18th of December, while I worked at Tiverton. There was no one present at the conversation I had with Mr. Cranston; I am satisfied it was on Christmas day. I have stated it as nearly as I can recollect; I do not know that he told me a man had passed the bridge on the 20th. I first told this conversation to John B. Cook, and afterwards to Mr. Drake. I knew there were charges against Mr. Avery of having had connexion with the girl, but I do not know that either Mr. Cook or myself had then heard that he was charged with her murder. [Witness afterwards said he believed he heard on the 22d that the prisoner was charged with the murder.] I told Mr. Hamphrey that I did not recollect passing round the gate on the 20th of December. I have since ascertained from my book that I commenced work on the 17th of December. I recollect that on that day I left off work and went over the bridge before night, and that on the next day evening, a young man came to see me at the shop, and we went over the bridge and passed through the gate together; on the night of the 19th I first passed round the bridge on the beach, and continued to do so every night without exception, while I worked at Tiverton. I passed round on the night of the 20th December. I never said I was not certain of the conversation I had with Mr. Cranston. I never said I saw a person cross the neck that night. My shop has one window, one large and two small doors fronting the street; the small door was open all day on the 20th of December; the large door was shut, except while I shod two oxen. I cannot see a person in the road through the glass window of my shop when I stand on the floor. The coal mines can be seen from Butt's hill. I do not recollect seeing a tall man with a cloak, surcoat, or spectacles pass my shop on the 20th of September. I worked at journeywork for Edwin Hambley; I stood in the shop every night but the first, from the time I commenced until the 25th of December, excepting Sundays. [The cross-examination of this witness was minute and tedious, and showed great confusion and uncertainty in his memory in regard to dates.]

SIXTEENTH DAY.

THURSDAY, MAY 23.

78. Rev. Daniel Webb.—I reside in New Bedford, Mass. On Saturday, the 19th of January last, about 4 in the afternoon, I had a conversation with Mr. Cranston, in front of the toll-house at Howland's Ferry Bridge. I was in a chaise with Mr. Benjamin Tilley of Bristol. While Mr. Cranston was changing a bill which Mr. Tilley gave him for the toll, he said, in reference to the death of Sarah Maria Cornell, "this is a sad affair." I replied, "it is a very sad affair." He said, "well, I can't think Mr. Avery crossed here on that day," (the 20th of December.) I said, "if you had so testified at Bristol, it would have helped Mr. Avery." He said, "well, I can't think he crossed here that day." We stopped probably not over two minutes, and drove on as soon as we received our change.

Cross-examined.—I am certain of the words, "I cannot think he crossed here that day." He gave no reasons; the conversation was very short; it was cold; I had heard a great deal on the subject, and did not wish to multiply words, and determined not to lengthen the interview. I did not ask him if a person like the one he described at Bristol, had passed the bridge that day. I cannot say when my first acquaintance with Mr. Avery took place; but I have at least seen him once a year for the last 10 years. He visited me last October or November, having come to New Bedford, I heard, to purchase stuff for pulpit cushions; I do not know by what route he went to New Bedford; I never saw him afterwards till I saw him here.

79. Benjamin Tilley.—[This witness testified that he heard the conversation related by the last witness, and that it had been correctly stated.]

Gideon Gray.—I reside at Bristol. I saw Mr. Cranston on Howland's bridge the last of March; he introduced the subject of Mr. Avery, and told me there was a man crossed the bridge between 3 and 4 o'clock on the afternoon of the 20th of December; that as he passed by he saw him raise his coat, and observed he had on a Spencer. He said that he did not know Mr. Avery, but thought the man who passed was either a lawyer, doctor or minister. He walked part way across the bridge with me. This was on the 29th of March; I know it because I was going to David Durfee's to pay some money due to him that day.

Cross-examined.—I know it was the day I paid the money, that I paid it on Friday, and that Friday was the 29th of March; I can state no other reason; perhaps I made a memorandum of it [examines pocket book]; I find I put down the payment but not the date. I have no other reason than what I have stated for believing it was Friday the 29th, rather than Friday the 22d. I think Mr. Cranston said the man had on a surcoat, and that his words were, "when he lifted up his coat he had a Spencer on;" I am not positive that he did not say, "it looked like a Spencer." I do not recollect his telling me what the weather was on the 20th of December. I knew Mr. Avery, but do not know where he was on that day.

80. Fanny Reynolds.—I live in Bristol. I had a conversation with Mrs. Amy Burden, of Tiverton, on Christmas day at my father's (Mr. Manchester) in Bristol, relative to Sarah Maria Cornell. [The object of this testimony being demanded, Mr. Randolph stated that Mrs. Burden had testified that she knew Mrs. Cornell, but had told witness that she did not know her, and his object was to discredit her testimony. The Attorney General objected to proving a conversation of Mrs. Burden for this purpose, inasmuch as she had not been interrogated as to such conversation. After some discussion, the testimony was ruled out.]

81. Rev. Isaac Bonney, of Lynn, Mass.; 81 Rev. Timothy Merit, of the city of N. York; 82 Rev. Timothy W. Wilson, of Charlestown, Mass.; 83 Rev. Eben. Blake, of Sangers, Mass. These witnesses testified that they had been well acquainted with Mr. Avery for 8, 10 and 12 years, and that his character for peace, humanity and continency had throughout been good and without suspicion. The last witness on his cross-examination stated that he had received the impression—but from what source he knew not—that Mr. Avery had studied medicine before he went into the Ministry.

82. Nicholas Peck.—I live in Bristol; I think Mr. Avery came there to reside last spring, but do not recollect the time. Hearing his name, I asked if he was related to Amos Avery, a Sergeant in Col. Sherburn's regiment; he told me Amos Avery was his father. About the 20th of November I conversed with him on the subject of Rhode Island Coal; he said it could be got for \$3 a ton, and that he would go over and try to get some.

Cross-examined.—I can't say I saw him on the 20th or 21st of December.

83. Lydia Le Baron.—I knew Mr. Avery in East Greenwich from 1824 to 1826; his character was irreproachable. I

have frequently seen him pass my father's house when I supposed pleasure or exercise was his only object. He was accustomed to walk to the north where the scenery was fine, and east towards the shore, and would sometimes be gone for hours. From what I have seen, I should suppose he had a decided habit of rambling alone.

Cross-examined.—These walks were much frequented by our villagers; I do not know that he was accustomed to walk longer than others.

84. *Isaac Alden.*—I reside in Bridgewater, Mass. On the 20th of December last I took tea at Lawton's tavern in Fall River, something past 6 o'clock in the afternoon; there was another man sat down to the table about the same time that I did; he was dark-complexioned, and rather taller than myself, had on a dark frock or box coat, wore spectacles and appeared to be from 30 to 35 years of age. There was a girl attending on the table; I do not know her name, but I believe I have seen her here on the stand. I met Col. Harnden in Stoughton when he returned with Mr. Avery. I saw the man they called Avery in the sitting room of Mr. Capen's tavern. I had received a letter from Mr. Nathaniel Burden of Fall River, requesting me to write him the particulars of my taking tea at Lawton's; and I requested Col. Harnden to tell him all I had to say about it; which would save me the trouble of writing. Col. Harnden told me to see if I could find Avery, for he was in the house. I went in and returned and told him I could not find the man I took tea with. That man was "longer-favored" and younger than Mr. Avery, but about of the same build; I do not know who he was; I distinguished at once that Mr. Avery was not the man.

Cross-examined.—Mr. Burden's letter stated he had heard that I knew Mr. Avery and had drunk tea with him at Lawton's on the 20th of December, and requested me to write him the facts. I had no conversation with the man I took tea with; I do not recollect the color of his glasses. I sell clocks; I was then collecting money; there were strangers passing in and out, but I did not notice them. Recess till $\frac{1}{2}$ past 2 P. M.

85. *Reuben Smith.*—I reside in Providence, and keep a ferry from the steam factory wharf on the west, to Capt. John Gladding's wharf on the east. During the four days meeting at Providence, in November last, the ferry was tended by myself and son (Elias Smith). He attended meeting during service, and between meetings, after getting his meals, came and relieved me while I got mine. No other person attended the ferry that week. I should not think Mr. Avery crossed that week; I should not like to testify positively, but I do not recognize him. If he had crossed while I attended, I think I should recognize him. I take more notice of ministers than others, and carry them over without charge; because being poor, that is the only way I can contribute to their support, which I feel under an obligation to do. I do not recollect of carrying any minister across that week.

Cross examined.—I do not generally remember people whom I carry across, a great while afterwards. I did not know Mr. Avery then, although I had seen him. There was no other ferry that plied regularly, although there were boats crossing occasionally.

Direct resumed.—From Pardon Jillson's to the Fall River steamboat, by the bridge, is about a mile; by my ferry it would be about three-quarters of a mile. If you go to any other places but the ferry, there are five chances to one against your being able to cross; people don't like to lend their boats to boys, and the men are generally busy. I should think it three-quarters of a mile from the new market to the bridge, and a quarter of a mile from thence to the Fall River boat wharf; these distances are mere guess work with me.

86. *Luther Chase.*—I live in Troy, Fall River. I recollect Mr. Avery's preaching at the Annawan Block, on the evening of Saturday the 20th of October last. The meeting broke up not far from nine o'clock. The evening was cloudy; I do not recollect seeing either moon or stars. On my way home from the meeting, Mr. Avery overtook, and walked with me ten or fifteen rods to the four corners where we separated; I went east, and he north towards Bennet's stables. To go to Mr. Bidwell's he would have taken an opposite direction. There was no one with him; the night was considerably dark.

Cross examined.—I cannot tell where I was, or whether it was dark or not on the next Friday. On the Tuesday preceding I was at meeting, but do not recollect about the weather. I remember more particularly about the Friday evening meeting, because we had a stranger to lead; I also remember that some brought lanterns that evening. I saw no one near when Mr. Avery was with me. I never told any one that I was not positive I saw Mr. Avery that night after meeting.

87. *Joseph Smith.*—I reside at Warren. On the 20th December last, at a little past one in the afternoon; the wind was west a little southerly. Towards sunset it was about W.S.W.

and the weather remarkably pleasant. I remember this from having been concerned in a ship which was then waiting to go to sea.

Cross examined.—I think it was not blustering in the morning. The morning of the 21st was very calm.

88. *William Carr, jun.;* 89. *Fitzhenry Homer;* 90. *Martin Bonney;* 91. *Hezekiah C. Wardwell;* 92. *Samuel Wright;* 93. *Thomas Thurston;* 94. *Benjamin Harding.* These witnesses all corroborated the testimony of Joseph Smith, relative to the weather on the 20th of December last.

95. *John B. Cook.*—I reside in Portsmouth about $2\frac{1}{2}$ miles from Bristol Ferry. Jane Gifford's character for truth and veracity is bad. I knew David Duval. Q. What have you heard him say Mr. Cranston told him on Christmas day? [The Attorney-General said he had not attempted to impeach Duval's testimony, and therefore objected to proving that he had made the declarations indicated by the question now put to the witness. Mr. Mason said that in his view Duval had been pushed on his cross examination for the purpose of impeachment, and stood impeached; and on this ground insisted on proving his previous declarations. The Attorney-General said he had only shown Duval's memory to be bad; and read the authority from Starkie on which the defence relied, to the effect, namely, that in order to substantiate a witness impeached by cross examination or otherwise, it may be shown that he made the same declaration to another person when he had no inducement for so doing, & no greater interest than when he swore. Mr. Mason said the defectiveness of Duval's memory was an additional reason for admitting proof of his declarations when the conversation between him and Cranston was fresh in his recollection. Attorney General.—You must first convince us, however, that he did not know the declarations of Cranston to be material. Mr. Randolph.—Neither he nor Cranston had then been summoned as witnesses. [Attorney General.—True, but the whole subject had been agitated; and Duval was just as much interested then as now to convince himself and others that his friend Avery had not crossed the bridge. Question reserved for the present.] I would believe Jane Gifford on oath if there was no possibility of her being mistaken; otherwise I would not.

Cross examined.—I am a methodist. William Earle Cook, who lives 50 or 60 rods north of Greens' Tavern on the east road belongs to the same society. I have a brother, Thomas W. Cook, who is now and was in December last, on probation. He then lived about $2\frac{1}{2}$ miles from the ferry on a cross road. [Further cross examined as to his means of estimating Jane Gifford's character.]

96. *Levi Sherman* of Portsmouth. 97. *Nancy Sherman* his wife. These witnesses concur in saying Jane Gifford's character for truth and veracity is bad.

98. *Oliver Brownell.*—I live in Portsmouth $1\frac{1}{2}$ miles from the ferry. My house is on high ground so that I can plainly see George Brownell's meadow and the white gate. I was at home on the 20th of December last. During the latter part of that week, what day I do not know, I saw a man passing from that gate south. [Witness explains the circumstances leading him to believe he was at home on the 20th until 3 P. M. contrary to his supposition when testifying at Bristol.] He was a tall man with a dark surcoat and black hat. He was in the meadow, about 15 rods from the road that leads to the Coal mines, and about 80 rods from the mine; he had passed the mine, apparently, and was going south. It is uncommon to see strangers pass in that direction. The day was pleasant. It was a few days before we heard of Miss Cornell's death, which was on Sunday. He was $\frac{1}{2}$ or perhaps $\frac{3}{4}$ of a mile from me—so far that I should not have known him if he had been an acquaintance.

Cross-examined.—Mr. Avery took tea at my house during the four days meeting in November. He knew that I sold coal, and asked me about it at that time. In going from Bristol to Asa Freeborn's on the main road, a person could probably see the white gate. There is no path from the ferry through the gate, to Asa Freeborn's. The ground on both sides of it is wet, and is called the Swamp; I think it was frozen on the 20th of December.

99. *Sarah Brownell.*—On the 20th of December last I was at the house of Daniel and Robert Wilcox in Portsmouth, from the window of which I could see into George Brownell's meadow. About 3 o'clock I saw a man in the meadow about two rods from the gate passing in a southerly direction: I thought he was a stranger from his being in the meadow; I cannot describe his appearance or dress. I recollect the time of the day because I asked a girl who he was, and she was not at home until 3 o'clock.

Cross-examined.—This was on Thursday before I heard of the death of Miss Cornell, which was on Saturday. The gate is about $\frac{1}{2}$ of a mile from Wilcox's. I have mentioned these

facts to several persons before and since the examination at Bristol. [In a cross examination of some length, this witness evinced greater volubility of tongue than accuracy of memory.]

100. *Sally Brownell.*—(Wife of Oliver Brownell) I saw a stranger in George Brownell's meadow; he was a tall man with dark clothes and black hat. I thought it was not a neighbor, and said to my husband "I wonder what stranger that is." I think he had on a "close coat surtout." I cannot tell the day of the week or month, or the time of the day. It was a few days before I heard of Miss Cornell's death. There is no circumstance that brings the time to my mind, only when I heard that a stranger had been seen there I said I expected he was the same man I had seen. I cannot tell when I first heard this said; the day was pleasant.

101. *Amy Anthony.*—On the 20th of December last I lived in Portsmouth on the west road about $\frac{1}{2}$ a mile from Bristol Ferry. I was at Andrew Brownell's that day. I left there at about an hour's sun and went to John B. Cook's store, where I staid about an hour and a half; and then went to George Halls. It was after candle light when I got there. I staid at George Hall's till after eight and there started to go home. On my way I overtook a man on the west road between Levi Sherman's and the school-house, going towards Bristol ferry, and walking very slow; I passed within a few steps of him. He was a tall slim man dressed in dark clothes and a dark hat. I overtook him about $\frac{1}{2}$ of a mile from home, and a little over a mile from the ferry. I should think it was nearly 9 when I got home; we had no time piece in the house. I mentioned the circumstance to my sister after I got home that night. It was a starlight night.

Cross-examined.—I next told it to my other sister, Mary. [States reasons for recollecting it was on the 20th.] I never said I got home about sunset, and that I knew nothing about the case. Before the Bristol examination Mr. Simmons came and asked if I saw a man near the Coal mines that day; I told him nothing about my having overtaken the man in the road. No one else came to see me on the subject. I have talked with Benjamin Green about it; he asked me if I had seen a man on the corner, and I said no. I never told him I saw a man in the road that night; I never told this to any but my sisters. I left home in the forenoon and got to Andrew Brownell's about noon. I saw Mrs. Jones that afternoon and was with her in the same chamber; but I saw no stranger in the meadow, and heard nothing about it.

SEVENTEENTH DAY.

Friday Morning, May 24th,—8 o'clock.

102. *Patience Anthony.*—In December last I lived in the house with George Gifford, half a mile from the Bristol Ferry. On the 20th sister Amy went from home, not far from 12 o'clock, and returned about 9 in the evening, as I was preparing to go to rest. I did not expect her to return until morning. On her return, she told of having overtaken a man on the road, circumstantially. [Witness explains several circumstances, which enable her to fix upon the 20th as the day.] About the time of the Bristol examination, William Simmons came and asked if sister had seen a stranger near the coal mines on the 20th of December, but no enquiries were made about her seeing a man in the road. It did not occur to me that the man she saw was Mr. Avery, until March last. When I thought of it, I enquired of her the particulars, and being satisfied, I first made the communication to Mr. Drake. Since I have been in Newport, I have talked with Mr. Blake and Mr. Bullock on the subject. Previous to March, all questions put to us had been about seeing a man at the coal mines. On the 20th of December, about 2 o'clock in the afternoon, I think, I saw Stephen Brownell pass by the house northwards towards the mill, and return again in something near half an hour, with a grist on his back.

Cross-examined.—Some time in January I read a part of the Bristol examination while at Mr. Smith's in Warren. He did not approve of conversation about the matter, and it was not much talked of in the family. I knew there were enquiries about a stranger having been in the neighbourhood on the 20th of December—that sister passed a man that night, and that it was said that Mr. Avery came to the ferry by that road on the same night; but it never occurred to me till March last that the man Amy met might be Mr. Avery, or that evidence of such a fact would be important to his defence. When I thought of it, I recollected that it was on the 20th that Amy had told of passing the man. When I talked with Mr. Drake on the subject, I went on purpose, and introduced the subject. I never conversed with Amy about it from the 20th of December to the latter part of March. [Witness detained the particulars of her conversation with Amy in March.] I do not think I knew that Mr. Avery had said he was at the windmill when the Bristol bell struck 9, but I knew it was said he was

at the ferry near 9.

Direct resumed.—When I talked with sister about the particulars, I said it might be of use to Mr. Avery, and told her not to communicate it to any one. Jane Gifford's character for truth and veracity has not been considered good.

Cross-examination resumed.—I have belonged to the Methodist church for 7 years.

103. *Mary G. Anthony.*—On the 20th of December last on the fore part of the evening, I was at John B. Cook's store with my sister Amy Anthony. We left it about an hour, or an hour and half after candle light and went to George Halls, which is half a mile off. I think it was past 8 when sister left George Halls alone, to go home. [States her reasons for knowing it was on the 20th Decr.]

Cross examined.—It was in March last, after Amy came from Warren that I first conversed with her on this subject. I talked with both of my sisters and shortly afterwards with Mr. Drake. In a conversation which we had with Mr. Blake I stated where Amy and I were on the 20th of December, and sister Patience stated what Amy told her when she came home. He put down the facts and asked Amy if they were correct. I am unable to distinguish what part she stated herself and what part she merely assented to.

104. *Elizabeth P. Hall.*—(Wife of George Hall) I live in Portsmouth, half a mile from where the Mess. Anthonys lived in December last. On the 20th of that month Mary and Amy Anthony were at our house. Mary came in the forenoon, and toward evening went to J. B. Cook's store. They came together in the evening considerably after candle-light. I should judge it was after 8 o'clock when Amy started to go home. I think they have correctly stated the time of their coming to my house and of Amy's leaving it. I do not consider Jane Clifford's character for truth and veracity good.

Cross examined.—My mother was there that evening. We have no time piece.

105. *Amy Anthony.*—(Recalled, wishes to correct her evidence of yesterday) I have had a conversation with Mr. Blake, in company with my sister. I did not state the facts myself; my sisters told the story and I assented or dissented according as it was correct or not.

Cross examined.—I was reminded yesterday of my mistake in saying I had conversed on the subject of overtaking the man only with them when I had also conversed Mr. Blake. I told it to sister Mary on Saturday the 22d of December, the day she got home.

106. *Robert Hicks.*—I lived at Bristol Ferry a few rods from Mr. Clifford's. On the night of the 20th of December I was waked up by some one knocking at the door, and indistinctly heard my son telling him the next house was the ferry house. I know not what time in the night it was; I went to bed early—perhaps by 7 o'clock.

Cross-examined.—I do not know Mr. Avery, and saw no one answering his description that day. I think the weather was blustering and cold. I have heard several witnesses testify about it, and I agree with them. Q. Did you hear them testify that it was blustering and cold. *Witness.*—I don't know that I did. It is now my opinion, that it was cold and blustering.

Direct resumed.—Well it does rather strike me that it was of a milder cast in the afternoon.

107. *Crawford Easterbrook.*—I live in Bristol. In the fore part of August last, Mr. Avery was at my house, when Dr. Sweet set his ankle, which was said to be dislocated or broken. I think it was something like three weeks after the injury was received. The ankle was swollen; and he was quite lame. Mr. Avery came near fainting under the operation. His walking was improved by it.

Cross examined.—I do not know that the bone was broke. Mr. Avery was lame some time after the operation: he came to Bristol on the 26th of July, and this was within a week or two after: I understood the accident happened at Lowell. I remember nothing particular of the 20th December last. Near sunset, next day, Mr. Avery called at my house, and gave me my handkerchief, which I had left at a neighbour's: he staid but a few minutes, and appeared cheerful. I remarked this to my wife a few days afterwards, when we heard of the things against him; and I remember it now.

Mary G. Burden. (Recalled for further cross examination) never said to any one that I did not know Sarah M. Cornell, till I saw her a corpse. I said I was not acquainted with her. I was not. I never have told any one differently from what I have stated in the stand.

Fanny Reynolds. (Recalled.) On Christmas-day I conversed with Mrs. Burden (the last witness) at my father's, in Bristol. She came in, and told of the woman being found hung. I asked if it was any body she knew: she said no, she never

saw her before. I think she added that she saw the corpse before it was taken down.

108. *Nancy Perkins.* I live in Bristol. On Christmas-day I conversed with Mrs. Burden, at her mother's house, about Miss Cornell, who had been found hung. I asked her if she knew the girl. She said no, she never saw her before, till she saw her hanging. She told me she took a linen pocket handkerchief, and a silver cased pencil from her pocket; and described how she was hanging. I went home and told this to my family immediately.

Cross-examined.—My daughter inquired of me what Mr. Burden said, and I told her I have no reason for believing that she said "I never saw her," rather than, "I never was acquainted with her," except that she said so, and I recollect it. Her mother, sister and husband heard the same conversation.

109. *Betsy E. Hill.*—I make my home at my brother's, at E. Hartford, Conn. Mr. Avery's wife is my aunt. I have resided in his family in all seven years. I have lived with him in Lowell, East Greenwich, Eastham, Sangus, and other places; I quit residing with him last Sept. Sarah M. Cornell was not in the habit of visiting at Mr. Avery's while we lived in Lowell. I never saw her there but twice, and both times with her bonnet on. The first time was on a Saturday afternoon in June, 1830; she stood but a few minutes, did not take off her bonnet, and went away soon. Next morning being Sabbath, she called again, and wished to see Mr. Avery. He was not at home, and she stood but a short time. She came pretending penitence, and wished to be received into the church again. It was a usual practice with Mr. Avery to destroy his letters. I have frequently seen him on reading letters, throw them into the fire, or tear them, or give them to the children. My whole name is Betsy E. Hill; the middle name is Elizabeth. My letters, while I was in the family, uniformly came directed to the care of the Rev. Ephraim K. Avery. I never received any letter after coming from Lowell to Bristol. It has been Mr. Avery's habit to ramble about in the places and towns where he has lived and been. In Sangus he would be gone half a day, rambling on the seashore, and in the neighbourhood. At Eastham, on the cape, he spent most of the year in rambling—sometimes riding, sometimes walking; he would be out from morning till dark. Last summer Mr. Avery had but one cloak, which was a black camblet; and but one surcoat, the same he has on now. I never knew him to have a cap, or saw him with one on. I have ever thought him a remarkably kind and affectionate man in his family; as much so as any man I ever knew. He has ever lived in the utmost harmony with his wife. About a week before removing from Lowell, he injured his ankle by falling from a fence. It was much swollen, but the physician thought it was not put out. After getting to Bristol, he had it set by Dr. Sweet. This enabled him to walk better, but he still complained of its hurting him.

Cross-examined.—When Sarah M. Cornell came to Avery's in Lowell, she wept, and appeared affected. My only reason only the general question was put to them whether they knew for calling her penitence pretended, is that we heard soon after of conduct inconsistent with penitence. When she was at the house I heard her say she had been a bad girl, and was sorry. She wished to join the church. Mr. Avery refused and said the church had had a great deal of trouble with her. In about the summer of 1830 I saw a letter in the hands of Abraham D. Merrill, (not the presiding elder,) which was said to have been written by Sarah M. Cornell. I did not read it; never saw it afterwards, and never saw any other letter from her. At Lowell, Mr. Avery first lived four weeks in Mr. Lamb's house; then moved into Mr. Abbott's house, the upper part of which he occupied for nearly two years. Mr. Abbott lived in the lower part. It was the practice to leave the door open till 10 o'clock, for Mr. Avery and his family to come in. He was sometimes out alone, and usually returned at that hour. He had a study appropriated to himself, furnished with tables, chairs, and a bed, but was not in it much, as he was very busy all the time he lived at Lowell. Visitors could go to his study without passing through the part of the house occupied by his family. He had a collection of different kinds of shells and minerals in the house. I never heard him converse particularly on geology. Mr. Avery was a physician before he became minister, but I do not know of his ever having practiced. I have heard him say he kept school, and attended store, in the early part of his life. His father, Amos Avery, was a farmer. Mr. Avery generally brought my letters to me from the post office, though they were sometimes brought by others. I should think Sarah M. Cornell did not know me.

110. *John E. Green.*—I live at Fall River. I was at the meeting at the Auauw block on the evening of 20th of December. I remember it was a dark night, because some people brought lanterns, and because in going down some steps, or my way home, I could not see them. I got home about 5 minutes past nine. About 15 or 20 minutes afterwards, Mrs. Bid-

well, who lives from 70 to 100 paces off, came in to enquire for Mr. Avery. I told her he had probably gone somewhere else to lodge.

111. *Levi Hill.*—I live in Warren. I am one of the magistrates who held the Bristol examination. John Durfee, a witness, showed the manner of the knot round the stake thus:—

[The witness placed two pieces of cord side by side and tied them together at one end, leaving two ends loose; then making this knot the bite of a slip noose which he placed round a stake, he cut the cords at a short distance thus presenting the appearance of four loose ends proceeding from the same knot.]

William Durfee produced a piece of cord which he testified had been taken from the neck of the deceased; and said he had cut off a piece and given to some one. Mr. Cranston testified that, on the 20th of December, 11 persons crossed the bridge—some known and some strangers; that, between 3 and 4 in the afternoon, a man passed, having no cloak or great coat, and observed, as he paid his toll, that it was cold; that, after he had passed, the wind blew up his coat, and he thought he had on a sweater; that he did not know him, or that he was a stranger. He (Cranston) stood opposite Avery while testifying, but did not undertake to identify him as the man who passed the bridge. George Lawton testified concerning the man whom he saw on the 20th of December between the bridge and Fall River, that, if he saw him passing along the same way at the same distance, dressed as he was, and the wind blowing the same way, he should recognise him, otherwise he thought he should not. He did not pretend to identify Mr. Avery as the man.

Neither did Abner Davis or Benjamin Manchester undertake to say Avery was the man they saw that afternoon near where they were blasting rocks. Dorcas Ford was one of the females who assisted in laying out the corpse, and was examined privately. The appearance of the body indicated, in her opinion, that "rash violence" had been used; and being asked whether, by that phrase, she meant rape, she gave the magistrates to understand that she did. The expression used by

Mrs. Meribah Burden, in reference to the same appearances, was that the deceased had been abused; but did not distinctly recollect her answer when asked what kind of abuse she remembered to. Previous to the introduction of Margaret B. Hamblly to be examined, the persons in the room were requested not to designate Avery in any way in her presence; and, being told to point out the stranger she saw at Lawton's, Fall River, she at first thought Mr. Horton was the man, then receded from her conclusion, and fixed on Judge Drury; but on further examination was satisfied he was not the man. [Recess till three P. M.]

Cross-examined.—I think Durfee made but one turn or hitch of the cord, when showing how it was put on the stake. He described the cord as "marine twine doubled." Neither Cranston, Lawton, Davis, or Manchester, while on the stand, were requested to say who the man was whom they saw on the 20th; who he was.

Direct resumed.—Avery was present. Neither of the witnesses intimated that he knew the man, or should know him if he saw him. William Durfee said that the cord he cut off was about four inches long to the best of his recollection. I do not know that John Durfee was asked how many ends of cord hung down.

112. *John Howe.*—I live in Bristol. I am one of the magistrates who took the Bristol examination. The warrant was issued by me on the complaint of John Durfee, who came in company with Seth Darling to my house on Sunday. Darling first mentioned the man they wished to complain of as Daniel Everett or Everill, the Methodist minister at Bristol; Mr. Blake, who was present, detected the inaccuracy, and ascertained the right surname. [This witness did not differ essentially from Mr. Hall in his account of the testimony of the several witnesses examined at Bristol.]

Cross-examined.—[This witness being asked for the official Examination of Avery taken before the Justices, produced a paper.] That is not in my hand writing excepting the formal words of commencement, which I prefixed to the writing handed me. It was not a statement reduced to writing before the Justices from Mr. Avery's examination; but he was told if he chose to submit a statement of facts, he might. That paper was then produced and read in his presence by Mr. Blake—having been prepared, as I supposed, for the purpose. [The document is not signed by the prisoner.] I think William Durfee said the string he exhibited had stretched, and was then about as long as before the piece was cut off by him. I accompanied the Deputy Sheriff who went to arrest Mr. Avery. On making known our business he commenced telling me that he had been on the Island on the 20th of December. I observed that it would be proper to forbear saying any thing further then; but he seemed anxious to tell his story,—said the truth could

not hurt him, asked me to sit down, and went into some detail as to his route on the Island. He mentioned the names of a good many persons, but as they were strangers to me I have forgotten them. I think he said something about going to the Coal Mines, and meeting a man with a gun. He mentioned several places he had been to, and his returning late to the Ferry, his knocking at a house to inquire for the ferryman, his anxiety to get home on account of the health of his family, and of his staying over night at the ferryman's house. He said nothing about having been overtaken and passed on the road in the evening by a female. He alluded to his lameness, its cause and treatment, and remarked that it pained him excessively in walking, he accelerated his pace beyond a certain point.

113. *Walden Potter*.—I kept a ferry at Providence at the wharf between Butler's and Humphrey's wharves, three or four rods from where the Fall River steam boat lies. It was discontinued on the 1st of October last, and has not been kept since.

114. *Elbridge Gerry Pratt*.—I live in Wrentham, Mass. On Saturday afternoon of the first week of the examination at Bristol, I was in Iram Smith's store, when Mr. Harnden came in and demanded all the letter paper in the store. A half ream was flung on the counter, (I think by Harnden himself, though I cannot be positive) in such a way that it "kind of" stucked to one side, so that we saw a half sheet among it, which fell out on the counter or the floor, I won't be positive which; but Mr. Harnden picked it up and said "take notice, gentlemen, this is the half sheet of paper, and I'll write on it that you may know it," and he took out his pencil, I don't think, and wrote on it, not right across, "but diamonding." A little time previous to this, a tall, long favoured man came into the store, and passed by me as I stood near the door, and walked directly round the end of the counter towards the desk where Smith was writing, which was several feet from the end of the counter; in doing so, he passed close by where the half ream of paper lay on the shelf, not more than two feet from Smith. He was then about 6 or 8 feet from me. He took no notice of me as he passed, except that he rolled his eyes round, and I looked out of the door when he got near Smith, thinking he had some business with him. I thought he spoke low or whispered to Iram. He staid but a minute or two, and went out. This was about three quarters of an hour before Mr. Harnden came. I don't recollect how long after this it was that I first spoke of this circumstance, but it was after I returned to Wrentham. The next time I mentioned it was at Miss (Mrs.) Nancy Cory's, where I boarded at Fall River. I never knew who the man was; I have enquired, but could not find out; and I have never seen him since.

Cross-examined.—It was very near night when the man came in: I did not see him put a half sheet of paper or any thing else in the half ream; if he had done so, I was near enough to see him had I been looking that way, but I was looking out of the door part of the time. The occasion of my telling this was, that an acquaintance of mine at Wrentham had been reading the printed report of the Bristol examination, and was speaking of the half-sheet of paper being found at Iram's store. When I told him I was there at the time, and knew something more about it. What made me remember these things more minutely was that in the morning before I went to Bristol, it being understood that a letter, said to have been written in the store by Mr. Avery, would be made use of, and enquiries after the other half of the sheet having been made, Iram made a search for it, but could not find it; and it being found so readily when Mr. Harnden came in, made me think strange, but I said nothing. The reason why I said nothing was, that I feared I might have to attend as a witness: I had no reason that I know of for not wishing to attend as such, than the trouble. I am a travelling merchant. I frequently deal with Iram; I had been buying goods of him that day, and was waiting to do some writing. I should think there were some others present beside me when Mr. Harnden came, but I do not recollect how many, or who they were.

By the Chief Justice.—When Col. Harnden found the half-sheet, was there no surprise expressed?

Witness.—Not that I recollect. The stranger's cloak was either a slate, or a blue cambiet, with a cape, and a collar of the same. I don't recollect what kind of clothes Mr. Harnden had on, or whether he wore a cap or hat. [The recollections of this witness proved, in the course of a long cross-examination, to be far more minute and exact in relation to the incidents above narrated, than upon any other point. The meekness, candour, and sobriety of his demeanour were exquisitely ludicrous. Little Hall could find no better study for a new aspect of the national character, he is so successful in illustrating than Mr. Elbridge Gerry Pratt.]

Mr. Randolph here offered in evidence the verdict of suicide found by the coroner's jury, on their inquest over the body of

he deceased, for the purpose of discrediting the testimony of William Durfee, and the coroner. The verdict, Mr. Randolph said, is signed by Durfee, as one of the jury, who there declare it to be a case of suicide: but he has testified on this trial, that in his opinion it is murder; while the coroner has testified that there was no verdict. If the Attorney-General admits that there is such a verdict, signed by Durfee, we are satisfied, without the verdict going to the jury.

The Court intimated, that any opinion expressed by Durfee in his testimony, was not to be considered as evidence, inasmuch as he was not examined as an expert; and the Attorney-General admitted the existence of such a verdict, as to which the coroner had obviously been mistaken; but protested against its being understood to impeach the testimony of Durfee. [The verdict states the belief of the jurors, that "The said Sarah M. Cornell committed suicide, by hanging herself upon a stake in said yard, and was influenced to commit the crime by the wicked conduct of a married man, which we gather from Doctor Wilbour, together with the contents of three letters found in the trunk of the said Sarah M. Cornell."]

Elbridge Gerry Pratt.—(Called again) Mr. Harnden (I think) was behind the counter when he held up the paper. I remained in the store from the time the stranger left it till Mr. Harnden came in. The shelf the paper was on was about as high as my shoulders.

Lucy Hathaway.—(Called again) I did not when I was on the stand before, mean to be understood that I knew Miss Cornell's situation before her death. I never heard from her, and never had the most distant idea what her situation was. On Sabbath morning a week or two before her death she asked me if I did not think it possible for an innocent girl to be led astray by a man that she had confidence in, and rather looked up to; and afterwards, what an innocent girl could do in the hands of a strong man and he using all sorts of arguments; but I did not understand these questions as having any relation to herself.

Cross examined.—I never shew was out of health after her return from the camp meeting; but the cause I never knew nor suspected.

Mr. Randolph here observing that he had no more witnesses in court, but should have in the morning, the Attorney General by his consent called, on behalf of the state,

115. *Samuel Randall*.—I am, and have been for several years the Postmaster at Warren. [The Attorney General produced a letter written on yellow paper.] The post mark on this letter is mine.

TEIGHTEENTH DAY.

Saturday May 25th.

(Evidence for the Defence continued.)

116. *Dr. Walter Channing*.—I reside in Boston. I am Professor of Midwifery and Medical Jurisprudence in Harvard University. [This witness in an examination (cross and direct) of uncommon interest, and occupying between two and three hours, advanced, and defended with great ability and perspicuity opinions according in all important points with those given by the medical gentlemen previously examined on the part of the defence.]

Seth Darling.—(Called for further cross examination) I commenced acting as Deputy Postmaster at Fall River in October 1831, and continued as such six months steadily; after which I was not regularly in the office. In November last I took no charge of the office except on the 19th. [Explains how he came to have charge of it that day.—Mr. Lesure the other Deputy being absent.] The two letters were dropped into the box just after the bell rang for breakfast, between half past 7 and the departure of the Newport stage at 8 o'clock. My impression is, that one of the letters was to go to Bristol and the other westward. When inquiries began to be made about the letters, I thought I had something to do with a letter to Mr. Avery and knew, if that was the case, it must have been on the day I had the charge of the office, which I ascertained from the books to be the 19th of November; and during the examination at Bristol I went to the Post office there, and found that Mr. Avery had received a letter from Fall River that day. I cannot say that one of the letters I received at Fall River on the morning of the 19th was directed to Mr. Avery but I am impressed with the belief that it was. When I went with Mr. Durfee to make complaint before Justice Howe, I gave him the name of Daniel Avery. Avery was a name that was familiar to me. I had it on a piece of paper given to me by Mr. Coggeshall, who also wrote down the names of three justices. I have no knowledge of giving any other name to Justice Howe than Daniel Avery; I am sure I did not, for I read from the paper.

Louisa Whitney recalled. [Witness at the request of Mr. Randolph shewed how the "harness knot" is made—being the same with the "clove hitch" as described by witnesses previ-

ously on the stand.] This is the knot tied at the outer edge of both the upper and lower parallel rods which support the harness. Weavers do not generally make their own harness; but they have to mend them more or less every day, as they are continually breaking; and it's done with this knot, with which weavers are perfectly familiar. I never knew it called a clove hitch till very lately. [Witness at Mr. Randolph's request tied the knot about her own neck with very great facility. The cross-examination of this witness, who, in addition to her youth, and a good share of personal beauty, was remarkable for self-possession and pleasing manners, elicited nothing of importance.]

By Mr. Randolph.—Q. Have you ever mended harness with this knot? **Witness.**—Oh dear yes, a thousand times.

Mr. Randolph here stated that he had no other witnesses present, though there were a few others whom he wished to examine. He therefore consented that the Attorney General should take the cause, reserving the privilege of introducing his witnesses when they arrived. Recess until 3 o'clock.

WITNESSES FOR THE PROSECUTION.

117. Benjamin Green.—I know Amy Anthony. Sometime since the 12th of March, (the day she commenced working at my house,) I led her into a conversation as to where she was and whom she saw on the 20th of December. She said she went to Mr. (Andrew) Brownell's, near the coal mines, about two o'clock, and returned home in the evening. I told her I heard that Mr. Simmons had conversed with her about seeing a stranger there. She answered, "I see no man that was a stranger in my travels that day but what I knew." About a fortnight previous to the commencement of this trial, some persons having rode up to my house in a carriage and called her out, I asked her next morning who they were. She said they were her sister Patience and Mrs. Smith, of Warren, who told her she must be ready to go to Newport to be a witness at this trial. I asked her what she knew about the matter. She said that when she was going home on the night of the 20th of December, she met a man in the road walking very slow, with a cane in his hand. I asked her where she then lived; she said about half a mile from the ferry. I asked her if she was then going home; she said she was. I asked her if it was thought the man was Mr. Avery; she said I think so. I then told her that according to her story he must have been going towards the ferry at that time—the same way she was travelling—and asked her how she could have met him; she said "well, then, overtook him." I asked her which road she was on; she said the east road. I asked her if there were not three roads, and got no intelligible answer. I then inquired about the three roads separately, and she still said it was the east road that she was on. I then pointed out the different positions and course of the roads, and she said it must have been on the west road; that she overtook the man near the school-house on the other side of Levi Sherman's; that he was neither very short nor very tall, and that she did not know him.

I have conversed with her at two different times since the carriage came to my house; I recollect that I left my work to ask her when it was she overtook the man on the road; she said it was the night after she had been to Mr. Brownell's. I then told her I thought her evidence would contradict what Mr. Avery had said; she said she had conversed with her sister Patience about it, and that the conversation commenced by her sister Patience saying to her, that if they could find any one who saw him that day, it would help Mr. Avery or save him, and that Patience asked her if she saw any one, and she told her she did, a man that walked slow and had a cane; she said that William Simmons came to Mr. Fish's to enquire of her if she saw a man that day; she afterwards told me that Nathaniel Munro came and asked her the same question. The first time Amey and I talked about this matter, she told me she got home about 8 o'clock; the next time she told me it was half past 8, and might be nearly nine o'clock. She told me she didn't believe there was any man about the coal mines that day; that she was in the chamber in a house near the coal mines, and there was a number of houses round; I recollect asking her if she spoke to the man or he to her; she said neither of them spoke. No conversation was held about the man she saw in the road until after Amey came back from the island where she had gone to help her sisters move. After her return, on my remarking to her that her statement rather conflicted with Mr. Avery's account of himself; she replied, "O dear! I wish I had never gone to help my sisters move, and then I should not have said any thing." She came down stairs one Sunday, when I was about shaving, with her bonnet on, and sat down in a chair and sighed; some tears fell from her eyes, and she said she must go to court or her sisters would never forgive her.

Cross-examined.—[The witness had some three or four conversations with Miss Anthony, but could give no date; nor could he distinguish what she had said at one time from what

he had at another.]

118. Joseph Fish.—I know Amy Anthony. I once asked her about her having seen a man near Andrew Brownell's coal mines, and she said she saw no one. A gentleman came to my house and inquired if I knew Sally Jones; on my replying that I did not, he asked me if Amy Anthony was in the house; I called her and inquired if she knew Sally Jones, and she said so; and I then asked her if she had seen a strange man near her coal mine when she was at Andrew Brownell's? and she said she did not.

119. Nathaniel L. Munroe.—On Sunday morning, during the Bristol examination, I asked Amy Anthony if she saw any man near the coal mines on the 20th of December; and she said she saw no stranger that day on the island.

Cross-examined.—I was sent to talk with her that day by Mr. Blake or Mr. Bullock; I told her Mrs. Sarah Jones had referred to her for the time of day when she (Mrs. J.) had seen a stranger near Andrew Brownell's; and she said she saw no one; I described him to her, as a tall slim man, with a dark suit, and dark broad-brimmed hat, but she repeated that she saw no such man on the island that day. On the day that Mrs. Jones was at Mr. Avery's to see whether he was the man she saw on the island, he went out to let her see him at a distance; when he came in, she said that he was the man she saw on the island on the 20th of December. She said she thought it was in the afternoon when she saw him, but that Miss Anthony would know; and my object in calling on Miss Anthony, was to find out the time.

120. Samuel Dennis, David Hall, Jane Hall, Hannah Hall, Diana Dennis, Rebecca Brownell, Sylvia Brownell, Mary Hicks. These witnesses testified that they knew Jane Gifford (some from her infancy) and concurred in representing her character for truth and veracity as good, with the exception of David Hall, who said he knew nothing about it for or against. The last witness also testified that she was the mother of George Hall's wife; that she was at George Hall's on the 20th of December, and saw the Miss Anthony's; and that Amy Anthony started to go home "it might be at half-past six o'clock;" but that she had no time piece to go by in judging of the hour.

121. Content Parry.—I am the wife of Elias Parry of Fall River. [The Attorney General was proceeding to ask witness whether Iram Smith got a wafer from her on the 8th of December, when Mr. Randolph objected to evidence of new facts being given; and insisted that the prosecution should be confined to rebutting the evidence given in behalf of the prisoner. After some discussion, the Chief Justice postponed the further hearing until the court should be full, Judge Bayten then being absent.] Court adjourned till 9 o'clock Monday morning.

NINETEENTH DAY.

Monday May 27.

The Attorney General renewed his notice for the admission of Mrs. Parry's testimony, namely, that on the 8th of December, Iram Smith had obtained of her a wafer, answering in appearance and description to that with which the anonymous letter on white paper dated that day, and found in the possession of the deceased was sealed. He intended it as a strong additional circumstance to show that the letter was written by Mr. Avery in Smith's store that morning; and he offered it because an attempt had been made to insinuate that the half-sheet of paper found in Smith's store and proved to be the counterpart of the half-sheet on which the letter was written, might have got there by a conspiracy between Col. Harnden and the tall stranger with the cloak and cap seen to enter the store by Mr. Elbridge Gerry Pratt. The Counsel for the prisoner in the absence of any settled practice on the point in Rhode Island, insisted on the English rule, which excludes cumulative testimony by the prosecution, on a second opening after the defence has gone into testimony, and moved the Court to exclude the Government solely to rebutting testimony for the remainder of the trial, with the exception of certain witnesses, whom the Attorney General had reserved the privilege of examining when he rested. The Attorney General cited the cases of *Smith v. Boston*, and of *Goodwin v. New York*, in both of which cumulative evidence had been introduced by the prosecution after testimony had been given for the defence. Independent of these, he insisted that in the present instance, the evidence offered, though cumulative in form, was in effect rebutting testimony. The mere fact of a tall man entering Smith's store under the circumstances sworn to, was immaterial and not worthy of rebuttal; the effect intended by it was to show that the prisoner did not write the letter. By strengthening the proof that the prisoner did write the letter, therefore, he rebutted, not the fact intended, but the effect of the fact sworn to by the witness Pratt. After a full discussion, the Chief Justice observed that it was a question of practice in this Court. The English rule was in his opinion, calculated rather to dis-

patch than justice. Gentlemen must be aware that the practice of this Court had never been so strict. The Court decide to admit cumulative evidence, subject to their discretion to be exercised as their intermission shall seem to be essential to the ends of justice. The motion to admit Mrs. Parry's testimony being granted, the Attorney General sent for her and in the meantime, called

Bailly Burden. (Second time.) I was present at the conversation on Christmas (sworn to by Nancy Perkins.) In answer to a question, my wife said she was not acquainted with Miss Cornell; that she had frequently seen her pass and re-pass; and that she had been told her name was Sarah Cornell. She also related the manner in which she had heard she was hung, and the circumstance of her taking some articles from her pocket, after she had been carried to the house. [The witness also referred to his former testimony about meeting the deceased on the 20th of October, when walking with his wife, who said she knew her name, but did not mention it then, &c.]

Cross-examined.—Directly after hearing of Miss Cornell's death, my wife told me that she was the girl we passed on the 20th of October.

Mary D. Burden (recalled).—I never told Fanny Reynolds that I saw Miss Cornell before she was cut down, I told her I did not, but that I afterwards saw her at the house. I also told her that James Mason went with me to the stack, and showed me the situation in which she was found. I told her I was not acquainted with the girl, but not that I had never seen her. I also conversed on the subject that day when Nancy Perkins was present; but I did not tell her, or any one else, that I saw Miss Cornell hanging; but stated how Mr. Mason had told me she was hung.

Cross-examined.—Nancy Perkins asked me if I saw the girl, and I stated as before, and that I had been informed of the manner she was hung. I don't know that I mentioned the name of Mason to Mrs. Perkins. I think my husband, mother, sister, and Lucretia Jones were present when I had the conversation with Mrs. Perkins. When she came in we were talking about the subject.

122. Lucretia Jones.—I was present a few moments during a conversation in Bristol, on Christmas-day, between Mrs. Perkins and Mrs. Burden. I heard Mrs. Burden say, she saw Miss Cornell's body after she was taken from the stake. I left the room about that time. In the morning of that day she told me she was not acquainted with Miss Cornell, but had frequently seen her pass in the street.

Cross-examined.—Mrs. Perkins stood by the door during the conversation. I was but a moment in the room.

Content Parry recalled. The 8th of December last I was attending store while Mr. Parry had gone to Providence, when Ira Smith came in, and asked me if I had any wafers. I found a few broken ones in a box, and gave him the largest. The wafer was not of a common color; it had a purplish cast, or it might be a brick color. Soon after I saw Mr. Bidwell go on towards the Post-Office and return. I saw a man with him, who, I think had on a cloak. [The letter of 8th December is shown here, and she thinks the wafer looks like the one she gave Smith.] I did not see the person with the cloak come out of the store with Mr. Bidwell. My husband returned on the 8th of December. I have no recollection of Mr. Smith's ever getting a wafer from me but once.

Cross-examined.—I think my husband returned the 8th of December, but do not recollect whether he went to Providence that day or the day before. He came from Providence in the steam-boat; I am more particular as to the day from the date of my husband's bills. I think it was on Friday; I ascertained it was the 8th about a fortnight since. I asked my husband what day he returned, and he thought it was the 8th. I asked my husband because I expected to be called as a witness. I had a conversation about the color of the wafer last winter. I told the color of the one I gave Mr. Smith, and I was then told that it resembled the one the letter was sealed with. The first I ever heard of the wafer after I gave it to Mr. Smith was from Mr. Smith.

123. John M. Smith.—I am a weaver and worked in the factory at Fall River in December last. I knew Miss Cornell and employed her. I have been a weaver for about 20 years. [Weavers harness show to witness.] A harness is mended with a square knot, [unakes it] entirely different from the one it is made with [viz a clove hitch]. A harness cannot be mended with a clove hitch, nor is it usually made with it, though it may be. I never knew harness mended with any other knot than the one I have described. On the 20th of December between 2 and 3 o'clock Miss Cornell asked permission, which I gave to leave the mill. She appeared agitated, as she always did when she asked duty favor from me; it appeared to be of confidence. She was asked if some of the girls might tend her looms. I told her I did not require it; but she said she wanted

the web got out of one of them so as to have it repaired by Monday. About candle light I saw her still there and asked if she did not understand me as giving her permission to leave the factory; she said "yes, I'm going shortly." This was the last I saw of her alive.

Cross-examined.—I saw Miss Cornell's body in the stack yard. The cord was a three-strand hempen cord called *marline*. There are several sizes of *marlines*. We perhaps use one ball a year in the factory; there is none used in the weaving room. I told Mr. Bidwell I thought she had twisted up some *twine* into a cord, but on returning I found none missing, and told him so. Recess till 3 P.M.

Cross-examination continued.—[Mr. Randolph. The cord deceased was hung with.] I should not like to say there was no such piece of cord used in the factory. I never have said that it looked like any cord that came out of the factory. I have brought you samples of all the cord we use; you can compare for yourselves.

Direct resumed.—The *marline* is kept in a drawer that is locked, and I keep the key.

John Durfee (recalled).—In taking down the body of the deceased, I took hold of her near her shoulders. I did not touch the body; she was taken by the head and feet when laid in the blanket. I gave the name of Daniel Avery to Justice Howe, when I went for the warrant. I said nothing about Everitt or Everitt; no other name but Daniel Avery was given in my hearing. I told Mr. Howe the name of the man myself. I cannot say whether Darling gave it or not.

Cross-examined.—I am sure I took hold of the shoulder to raise the body, and endeavored to take the cord off the stake with the other hand. I did not put my hand on the body other than on the shoulder.

Lucy Hathaway (recalled).—I have been a weaver three years. [At the request of the Attorney-General, the witness breaks a harness, and shows two ways of mending it—one, by a single knot, and the other by a double square knot.] I never saw the clove hitch used in mending harness.

Cross-examined.—The last of November I saw Miss Cornell with a letter which she said she was going to send away by mail. It was the 28th or the 29th of November. It was on pink paper. [The Attorney-General here moved for leave to enquire of witness to whom the letter was directed; but at the suggestion of the court withdrew the motion for the present.]

Mary D. Burden and Amy Durfee, called again,—give testimony to the same effect in relation to the mending of harness.

124. Elias Parry.—I am the husband of Content Parry. I went to Providence on the 7th of last December and returned on the 8th. I was not again in Providence during that month, before the death of Miss Cornell. I returned from Providence in the steamboat, and think she left at 3 o'clock.

Cross-examined.—I know by my bills that I returned on the 8th of December. I know from memory I was in Providence about that time. [The bills are dated on the 7th and 8th.] I know I went to and returned from Providence in the compass of those two days, and I am pretty certain I did not go the 8th and come back the 7th. (A laugh.) Hence I must have returned on the 8th; the boat in which I came arrived it Fall River about 1 o'clock.

Harvey Harnden, called again.—In the early part of January I took some note of time, and made a memorandum of the result as follows:—On the 1st January by a lever watch which was right by watchmaker's time in Fall River, I found Benjamin Hambl's watch 9 minutes faster than the watch. Mr. Chase's clock was 17 minutes faster. The Pocasset manufacturing company's time 12 minutes faster. Mr. Child's in Warren, watchmaker, I found 17 minutes faster than my watch. Col. Cole's in same place 14 minutes faster. Mr. Horton's clock in Bristol I found 14 minutes faster; the Bristol town clock 19 minutes slower. On the 2d of January I found Mr. Pearce's clock at Bristol ferry fourteen minutes slower, and Jeremiah Gifford's clock twenty minutes slower and watch seventeen minutes slower. Mr. Cranston's clock at the bridge ten minutes slower, and Captain Lawton's three minutes slower. Same day found the Pocasset clock five minutes faster. [He gave the relative difference of the time at the same places, on 5th, 6th, 8th, and 9th of January. On the 6th of January he compared the lever watch with the timepiece he had set it by, and found the lever 4 minutes faster.] I went up to Mr. Avery's house with Mr. Bullock on Christmas day. Mr. Bullock said he hoped the Fall River people had not come to Bristol with improper motives. I told him if he would tell me where the people were, I would get them to disperse. I told Mr. Bullock that two men on board tea boat wanted to see Mr. Avery. When we got opposite to Mr. J. D. Wolf's, Mr. Bullock said, I don't think there is any need of our going, as people are walking lustrely out of the street. He proposed going back; I said

no. In the street near Mr. Avery's house there were 40 or 56 people. I told them they ought to see the impropriety of gathering at that place. They dispersed; I heard no more noise. Mr. Burdick and myself returned arm in arm, and I introduced him to Mr. Burden, near W. D. Wolf's house.

Mr. Staples suggested to me at Bristol the propriety of getting the letter paper from Mr. Smith's store: I went to the store as late as seven o'clock; there were 8 or 12 persons present; I asked Mr. Smith to let me have all the letter paper in his store; Mr. Smith first threw down a part of the ream and then the residue, and said here is the half sheet (holding one in his hand) which I looked for before I went to Bristol; I know Mr. Pratt, but do not know whether he was in the store or not. The $\frac{1}{2}$ sheet was never on the floor to my knowledge, nor was I ever behind the counter until this morning; I had on a black hat and pea jacket of brown Petersham and Russia dog skin collar.

Cross examined.—I might have stopped with the people near Mr. Avery's house from one to three minutes; I do not think Mr. Bullock left me nor let go of my arm all the time.

125. **Enos Briggs.**—I was in Iram Smith's store on the 8th of December last; there were two gentlemen in the store; one of them was Mr. Bidwell, the other man I did not know; he had glasses on; I was informed it was Mr. Avery; I left the store and both of the gentlemen in it; I was gone fifteen or twenty minutes and when I returned, as I stepped into the store I met the gentleman with glasses on going out alone; I was in the store when Col. Harnden came to get the paper; I saw the half quires counted; Col. Harnden was outside the counter; he said here is the half sheet, I will mark it that you may know it; it was about 7 o'clock in the evening; I do not know that I saw Pratt in the store that evening. I might have been in the store 10 or 15 minutes before Harnden came in.

Iram Smith called again.—Col. Harnden was not behind my counter when the half sheet of paper was found; I found myself; I have no recollection of any tall man, a stranger to me, in a cloak and fox colored cap coming behind my counter that day; nor did I see any stranger in my store and behind my counter that day. It was barely possible for a person to have come behind my counter and put that half sheet in the ream while I was at my desk without disturbing me. Col. Harnden did not take the half sheet from the floor; I found it between other sheets of paper; Col. Harnden came into my store according to my recollection between seven and eight o'clock; I think I had been to Bristol that day; I have some distant recollection of Mr. Pratt's being in the store that evening, but am not certain; I had no conversation with him relative to the stranger with the cloak and cap.

Cross examined.—Pratt was often in my store; he was a little concerned with me when I first commenced business; we had lights in the shop when Col. Harnden came in; I have no recollection that the half sheet projected out from the rear of the paper; I think it did not; I had searched twice before for it; I looked in my desk, on the top of the ream, and by the side of it, and wherever I thought it most likely I should find it; I never disturbed the ream before, in looking for the half sheet.

Direct resumed.—Dr. Hooper was in my store about that time and wrote a letter; I gave him the paper he wrote on; I gave him two other sheets of paper; I carried the letter and paper I gave him to Bristol myself.

126. **Benj. Hall.**—[Witness bears a striking resemblance to the prisoner in feature, and is about the same height, but is of a stouter build.] I live in Bristol Rhode-Island; I was in Portsmouth on the 13th of December last, near the coal mines between 11 and 12 o'clock, 80 rods from them; I passed through George Brownell's gate and meadow in a S. W. direction, first went in a direction leading towards his house; I had on a blue camblet over coat with a cap and a black hat; I was there but a very short time, say 20 minutes; I left Brownell's house and went in a S. E. direction, with the intention to call on Mr. Barker; I called there between twelve and one, stayed a short time, went to David Anthony's and returned to the ferry. At Mr. Avery's request I have travelled part of the route which he is said to have taken, since that time. [Witness describes at length the route he then took in company with Mr. Boyd and Mr. Norris and the localities he observed.] I saw Sarah Jones when I went to explain the route.

Cross examined.—The 13th of December was I believe on Thursday.

Louisa Witney.—Called again; (she is asked to break and amend a harness which she does, she also describes the knot as a clove hitch.) I first tried to make that knot around my own neck about five weeks ago; I have made harness; It is the knot used at Waltham; I always make that knot in making a harness. About two months since I first heard of the "clove hitch." It was said to be the knot Miss Cornell hung herself

with; I got some one to show me how it was tied, and immediately said it was a harness knot.

Zenas Thomas, John Gray.—[These witnesses sometime in the early part of December saw Mr. Avery standing in the street at Bristol reading a letter on pink paper.

TWENTIETH DAY.

Tuesday, May 28.

George Lawton called again.—The first conversation I had with Peleg Cranston on the subject of Miss Cornell's death was on Sunday the 23d of December; he described the person who passed the bridge on the afternoon of the 20th as a tall man, in dark clothes and broad brimmed hat, and said he thought he looked like a Methodist minister; he said he was a stranger to him; at the time of the conversation we did not know that Mr. Avery was suspected. In the evening we heard that Mr. Avery was suspected. Cranston said he did not know Mr. Avery.

127. **Gideon Hicks.**—I live in New Bedford. On the 20th of December last I was at my father's, Robert Hicks, next to Mr. Gifford's at the ferry. I spent a part of the evening at the house of Mr. Irish; I left there after 9 o'clock, and went to Wm. Anthony's about a quarter of a mile off; staid there some time, and then returned home. Anthony lives about a quarter of a mile from our house; on my return I went up stairs and was going to bed, when I heard a knocking at the door; I inquired what was wanted, and the person said he wanted to find the ferry house; I told him it was the next house. The evening was chilly, pretty cold and uncomfortable to be out. I was at and about home all day on the 20th of December, but saw nothing of Mr. Avery.

Cross-examined.—I did not look at the clock at Mr. Irish's; when we were coming away, some of the company said it was past ten; another person looked at the clock and said it was past nine. I may have stopped at Mr. Anthony's a quarter of an hour, perhaps a little more.

Direct resumed.—I went to Anthony's in company with a young lady; at Mr. Irish's there was considerable company.

128. **Robert Wilcox.**—On the 20th of last December, I lived about two miles from Bristol ferry, near Mr. Anthony's; when the sun was about one hour and a half high, I was at the coal mine. I did not see on that day Mr. Avery or any person who resembled him; between the sun $2\frac{1}{2}$ and half an hour high, I went to the store near the coal mine; I went down the road across Mr. Anthony's and Mr. Brownell's ground; I passed through Mr. George Brownell's meadow and out of his gate; last December the gate looked as if it had been whitewashed.

129. **Geo. S. Brownell.**—I live in Portsmouth, about $\frac{1}{2}$ of a mile from the coal mines, and was at the coal mine wharf the 20th of last December. I left home soon after 12 and returned home about 4. I was engaged getting off some turkeys; I went directly down from the house through the gate to the wharf; I saw no person while going, returning, or at the wharf that I did not know. I did not see Mr. Avery. From our house a person may be seen nearly down to the mines; a person standing 15 rods south of the gate could not be seen from the coal mine wharf; there were several persons with me at the wharf; it was quite cold that afternoon, and there was considerable wind; the wind was so high in the morning that Mr. Dennis did not dare to land at the coal mine wharf; he went to Bristol ferry and returned in the afternoon; Dennis was collecting poultry for Mr. Dunbar.

Cross-examined.—At the coal mine I saw Russell Anthony, Seth Anthony, Mr. Freeborn, Mr. Dennis, and a boy. I should not think I could from the wharf see any person from the mines that had been worked. I heard of the death of Miss Cornell on the Saturday morning following. It was so cold that we stood to the leeward of the wall.

130. **Geo. Brownell 2d.**—I live in Portsmouth, about 60 rods from the coal mines. In the forenoon I was drawing seaweed from the shore, and at work round the house in the afternoon. I saw no person whatever pass my house that day; from where I was in the afternoon, I had a fair and full view of the white gate; I commenced working around my house about 2 o'clock, P. M. and worked till near sun set. In the afternoon it was steady winter weather; the wind was about WSW, or between W and SW, in the morning it blew hard.

Cross-examined.—I was at work banking up my house, and from either side of it I could see the gate of the coal mine, except from the south side; a part of the coal mine can be discerned from the part of my house which is the NW side of the house; persons acquainted with the ground pass my meadow to get to Asa Freeborn's; women pass through my gate, and men generally get over the wall a little to the westward of the gate; I was not at work on the south side of the house more than 10 or 15 minutes; I was at work, and stood a good chance

of seeing any person pass the gate.

131. *Russell Anthony*.—I reside at Portsmouth at my father's house. Seth Anthony is my father. I went on the 20th of last December, between 12 and 1 to the coal mine wharf, where I remained until about 4 o'clock. I then went to the house, remained there 15 minutes, and then went to the store in a SW direction. I did not see on that day, Mr. Avery or any person resembling him. Our house is half a mile south of Mr. Brownell's, and about 50 rods WNW of Asa Freeborn's; a person crossing from the coal mine to Asa Freeborn's would have crossed the road I took going to said wharf; I saw Geo. Brownell and others at the wharf; I did not see Robert Wilcox there.

132. *Christopher Barker*, of Portsmouth. I know Sarah Brownell; have conversed with her; but never heard her speak about seeing a man near coal mines.

133. *James Taylor*.—I keep a diary of the weather three times a day, at sunrise, at 2 P. M. and at 9 o'clock in the evening. Last December on the 20th, at sunrise the thermometer stood at 26 degrees above zero; at 2 o'clock 34, and at 9 in the evening at 29. The wind was west all day, and my general observations puts it down clear and pleasant.

Isaiah Simmons 2d.—I saw Mr. Avery pass our house on the 21st of December last. I live in Bristol, one mile north of Bristol ferry. I did not then see any thing in his hand. The day before when he passed going to the ferry, he had a bundle under his left arm. It was covered with silk a handkerchief, and about the size of a pair of pantaloons. I saw him pass about 2 o'clock, P. M.

Cross-examined.—I was within six feet of Mr. Avery when he passed me on the 20th. James Sanford was with me when I saw him. I mentioned it in the afternoon to Mrs. Sanford and her two daughters. On the 21st of Dec. I only saw Mr. Avery's head and shoulders as he passed.

Dr. William Turner, called again by the government. I should not think the necessary pressure with the hands, in taking down a person hung, would make marks on the body 10 hours after death. If I found marks on such a body, I should judge that violence had been used before death, or great violence after death. Violence before death would produce what is called black and blue spots. I consider a fetus 8 inches at 3 months and 20 days, and menstruation after conception, both extraordinary circumstances. If I saw a fetus 8 inches in 3 months and 26 days after the mother had menstruated, I should to ascertain its age, examine the length of the spine, and the development of the organs. I should think 8 inches at 3 months and 20 days, was an extreme length, but not beyond nature's limits. There is a great difference in the size of a fetus at the same age, in different women, and in the same women at different pregnancies. This may depend both on the health of the mother and the fetus. There is great uncertainty in the authors; they use the term in the third, fourth and fifth months, in describing the length of a fetus without stating in what part of each month their observations would apply to.

Cross-examined, on part of prisoner.—I understood by marks on the body discolourations. Indentations on the body I should conclude were made after death. I think it possible that an exterior pressure might produce marks on the skin of the abdomen, without corresponding marks on the viscera. I have known many instances of external violence producing no visible effect on the skin, when there were deep marks on the viscera. A severe blow on the abdomen may produce external marks, without internal ones, or vice versa, or marks on both the external and internal parts. Fetuses differ in size during pregnancy, as much as at parturition.

134. *James Sanford*.—I live in Bristol, a mile from the ferry. I know Mr. Avery by sight, and saw him going towards the ferry on the 20th of last December, with a bundle under his left arm, about the size of a pair of pantaloons, tied up in a pocket handkerchief. I mean a pair of thin pantaloons. On the morning of the 21st of December, when the sun was about a quarter of an hour high, I saw Mr. Avery going towards Bristol; he then had the bundle under his arm. He passed the street as I came out of the yard. It was a small pack in a red and white silk handkerchief. Mr. Avery bowed to us as he passed.—(Witness said he gave us the time of day. Randolph asked what time it was. Witness said that it was good manners.) It was cold as the devil in the morning, but very pleasant in the afternoon. (Here the witness was told by the court he might leave the box.) Witness—I thank your honour.

135. *William Earle Cook*.—I reside in Portsmouth, about 2 miles from Bristol ferry. I was not at home on the 20th of last December, until between six and seven in the evening. I got home about half past six. I know Mr. Avery; he has staid two nights at my house; and generally, when on the island, he makes my house his home. He was at my house most of the

time during the four days meeting last November.

Cross-examined.—I once went over Howland ferry bridge, with Mr. Avery to a meeting. We crossed the bridge at dusk; paid no toll. At the time I saw Mr. Cranston through the window when I came back. Going over I saw no one at the toll-house. Mr. Avery asked me if I was not going to pay toll. I told him I would pay it at another time.

136. *Joseph Thomas*.—I live in Portsmouth, about 2 miles and a half from the ferry. I know Jane Gifford, and as far as I ever heard, her character for truth and veracity was good. I never heard any thing against her character before the Avery examination in Bristol. I have always known her father and family.

Cross-examined.—I never heard any thing for or against her character for truth and veracity.

137. *Thomas Burden*.—I reside in Portsmouth, about a quarter of a mile from the ferry; am a blacksmith. I worked in my shop a part of the time in the afternoon on the 20th of December. I think it likely I was in my shop from 2 to 3 of that day. I was not away from home that day. I do not know Mr. Avery. I saw no person that looked like him pass my house or shop that day. I know Jane Gifford; her character for truth and veracity is good in our neighbourhood.

Cross-examined.—I know by my books and memory that I was at home and at my shop on the 20th of Dec. I am seldom from home.

Recess till 3 o'clock.

138. *Lucy Munroe*.—[Witness was asked what she heard the prisoner say on the morning of the 20th December, as to how he had rested the night previous. The Attorney General said he proposed to show that he then said he had never passed so restless and anxious a night before; and if permitted, he should also propose to show that the deceased about the same time stated the same fact relative to him; and he should thence infer an intercourse between the prisoner and the deceased about that time, of which no direct evidence as yet had gone to the jury. A discussion took place, and the testimony was ruled out.]

139. *Rebecca Pike*.—I have been a weaver about 3 years; I was formerly employed in the factories at Lowell. [Witness says how harness is mended there, using a knot different from the clove hitch.] I have been about a fortnight at Fall River, where they use the same knot. I know of no other knot used in making or mending harness. I knew Miss Cornell in Lowell; she was at a different corporation. I never heard anything unfavorable to her character. She told me when she was about being turned out of the church in Lowell, that if she was turned out Mr. Avery ought to be, for he was as bad as she was. I never heard any bad reports about Miss Cornell in Lowell. I have heard her say that Mr. Avery had been to her boarding house after her: to go out with him.

Cross examined.—People used to talk about his going there. I don't know what they said he wanted her to go out with him.

Dr. Thomas Wilbur. (Recalled).—Q. What have you heard Miss Cornell say relative to her situation, and the author of her seduction, and relative to her taking a certain medicine?

[The Counsel for the Government said they propose to show that the deceased disclosed her situation to the witness, and told him that the prisoner was the author of it; that she consulted about taking a certain medicine to procure abortion, which the prisoner had recommended to her, and that on being informed it would endanger her life, she declared she would not take it; she informed him of her intended interview with the prisoner, and of the reparation he proposed to make her, and that when the witness told her it was not adequate, she intimated that the prisoner was poor & she would not consent to embarrass him with an exorbitant demand. They offered to show, 1st, that the deceased was not only averse to suicide but to death, by other means; 2d, that for some time previous to her death she was actuated by feelings of a kind and affectionate character towards the prisoner, and by friendly sentiments towards the Methodist sect;—and they offered it because on the other side the history of the deceased for years back had been ransacked for the purpose of showing a propensity to suicide, and a spirit of hostility and revenge towards the prisoner and of enmity towards the Methodists.]

The Attorney General expressed his regret at the necessity of raising such a question in the hearing of the jury, and disclaimed a wish to have them influenced to the disadvantage of the prisoner by any thing not actually testified by the witness. The Counsel for the prisoner objected to this testimony, because, though the professed object of the Counsel for the prosecution could not be gainsayed, they proposed to attain it by converting the declarations of the deceased not made upon oath or under prospect of immediate death, into evidence against the prisoner of two distinct crimes, namely, of adulterous

intercourse with her, and of compressing her death by advising her use of a poisonous drug—evidence which, though he was not then on trial for those crimes, if once given to the jury would inevitably have an influence on their minds that must endanger his life. After a discussion of some length, characterized by more warmth than is usually exhibited by counsel in arguing a mere point of law, the Court decided that the witness might testify to declarations of the deceased evincive of her aversion to suicide, and of her kind feelings towards the prisoner, his family, and the Methodist society; avoiding every thing going to charge the prisoner with the crimes alluded to in the objections of his counsel. The witness then proceeded. On the 21st or 22d of October last, Miss Cornell called on me to ascertain the propriety of her taking the oil of tanzey to procure abortion. I told her it would endanger her life; and that if it did not kill her it would ruin her health. She said "then I won't take it; for I would rather have my child and do the best I can with it, than endanger my life." She called on me at 5 different times, and each time expressed feelings of tenderness and sympathy towards Mr. Avery and his family. She also spoke of the Methodist society, but said nothing against it. My last interview with her was in the latter part of November.

141. *Wm. B. Fules.*—I live in Newport, and drove a stage to and from Bristol ferry last November and December. Gifford's clock at the ferry was in those months slower than Newport time. I never knew it as fast as Newport time: it was 10, 15, and sometimes 30 minutes too slow.

Cross-examined.—My watch was right by Newport time.

Rev. Ira M. Bidwell, recalled.—I think I am acquainted with Mr. Avery's handwriting. I do not know that I ever saw him write, but I have received letters from him—three in all; I would correct my former testimony where I said only two. Previous to my receiving one of the letters we had talked about his writing to me; and one of them invited me to attend a four day's meeting which I attended. [The Attorney General, now moving to prove the prisoner's hand-writing by the witness, Mr. Randolph objected, and the Court ruled out the testimony on the ground that the witness had not shown a sufficient reason for his competency; within the strict rules of law.] The Court then adjourned.

TWENTY-FIRST DAY.

Wednesday, May 29th.

Rev. Ira M. Bidwell (called again.) I have received a letter purporting to be a letter written on pink paper. Q. Have you ever received another letter on straw coloured paper signed by Ephraim K. Avery. [Mr. Randolph objected, and contended that no questions could be asked about the letter until it was proved to be signed by the prisoner. The Attorney General said the question was intended to elicit the knowledge which the witness had of Avery's hand writing. The letter referred to, he said, was one of business; it related to an exchange between the prisoner and witness; the witness had acted on it, and it was afterwards referred to in conversation between them. After discussion the Court admitted the testimony.] *Witness.* I received a letter signed by Mr. Avery inviting me to attend a four days' meeting in Bristol the last of September. The letter is lost. I do not remember whether the letter was signed Ephraim K. Avery or E. K. Avery. In consequence of the letter I went to Bristol and there saw Mr. Avery. I should have attended the meeting had I not received the letter, I also received a letter signed by Mr. Avery requesting an exchange. I do not remember how I received the letter or answered it. Previous to receiving the letter I had a conversation with Mr. Avery relative to the exchange.

[The Attorney General, on these additional facts, moved for leave to ask the witness if he could identify the prisoner's hand writing, when another discussion took place. The Court remarked that the facts now disclosed present the case in a stronger light than before, and rendered the witness competent to express his opinion—the jury being judges of the weight due to that opinion. They therefore allowed the question to be asked: Whereupon the Attorney General produced a letter written on white paper, and asked the witness if it was in the prisoner's handwriting? *Witness:* I have seen this letter before, and gave, and now give, my opinion that it is in Avery's hand-writing. [The Atty. Genl. here presented another letter, and asked the same question. *Witness:* if it had been shown me without the signature, I should not recognize the hand. The signature I believe to be his, not the superscription. I never saw Mr. Avery and Miss Cornell together. On the 19th of last October I saw them within three or four feet of each other. Mr. Avery and myself came out of the meeting, and after going a little way I saw Miss Cornell a few feet behind us. I stepped a little forward of Mr. Avery; he was to stay at Mr. Mason's, and went up a pair of steps; the girl I took to be Miss Cornell followed him. I have seen persons go that way ingoing]

from the place of meeting to where Miss Cornell boarded; people often go that way. I did not know but what the girl wanted to speak with him, and stepped forward to give her a chance.

Cross-examination.—[The witness having intimated that there had been a conversation between him and the prisoner, in consequence of which he (witness) had stepped forward to allow of an interview between the prisoner and the deceased on the occasion above alluded to, Mr. Mason asked what that conversation was. The Counsel for the prosecution objected, and another discussion ensued. The Court declared that the prisoner's counsel were entitled to show the reasons assigned by him for their interview, as also the reasons of the witness for giving them an opportunity for it.]

Miss Cornell was on probation in my church, and I supposed wanted to see Mr. Avery on that subject. I inquired of Mr. Avery on the afternoon of the 19th of October relative to the character of Sarah M. Cornell; he said he did not know Sarah M. Cornell, but knew a girl by the name of Maria Cornell, who had been expelled from his church in Lowell, and described her person. I told him that from his description I thought it was the same girl. It identified her except as to her glasses. I stepped forward to give her an opportunity of speaking to Mr. Avery, that I might find out from him if it was the Maria Cornell he was acquainted with. I did not hear her speak to him. The first time I have any recollection of seeing Mr. Avery in Fall River, was the 19th of October, and I saw him there but once between that time and 7th of December. I saw Miss Cornell after she was hung, on Friday, between 8 and 9 o'clock, A. M. after she was cut down; I understood she was not recognized until I got there; I was asked if I knew who she was, and after examining her I said it was Miss Cornell. She was on the ground; her cloak was open along so that I saw her gown. I examined the cord on the stake, but not the knot particularly. It had something of this appearance. [Ties a double cord in the common double knot round a cane, leaving four loose ends, and being asked their length, takes hold of two about 10 inches from the knot, and the other to about 5 inches.] Mr. John Smith examined the cord, and said, "It is just such a cord as I hang up my harnesses with in our factory. I brought a quantity of it down a few days before into the room, and I will look on my return and see if any of it is missing." I was at Iram Smith's store on the 8th of December, between 11 and 12 o'clock; we conversed about a piece that had been published in the Fall River Recorder. I referred to several other pieces. The paper (Recorder) was on the counter; I told him the publisher was a member of the methodist church. Avery said he ought to be talked to for publishing such a piece. I asked Mr. Avery to write me on the subject, that I might have an opportunity to converse with the publisher; Mr. Avery put the paper in his hat; we left the store together; I did not see Mr. Avery write at Smith's store; I parted with Avery about a rod from the store; he turned off north, and I went home; he staid at Fall River on the 7th of December, at my request; he was going to New Bedford to get branches for his pulpit in Bristol; I asked him to stay for the pleasure of his company; I have no recollection of seeing Avery behind Smith's counter; the pink letter is the one I received from Mr. Avery after my conversation with him in Iram Smith's store.

Direct resumed.—I did not state at my examination in Bristol that I left Avery in Smith's store when I went out; I cannot tell how far I walked with Avery from Smith's store; I think it was ten or 15 feet; I went home. Avery did not, to my knowledge write in Iram Smith's store on the 8th of December. I did not hear him ask for paper to write on. He stood about midway, in front of the counter, most, if not at all the time. I saw Mr. Avery in Bristol on the 20th of October, he left in the boat for Fall River; I went to Fall River on the Monday following, (22d October) Avery had not got to Bristol when I left, and I did not find him at Fall River when I got there. At the Bristol Examination I gave no testimony as to the cord on the stake; I was not asked the question, and did not know it was material. The rope had not been taken off the stake when I first saw it, to my knowledge; the two short strings that hung down were about four inches; I do not know what kind of a knot was tied round the stake, I did not examine it; I should not like to state within two or three inches the length of the ends that hung down from the stake.

[The Attorney General then offered to read the letter which had been proved to be in the prisoner's hand-writing, viz. the letter addressed to the Rev. George Storrs, Great Falls, N. H. He offered it, he said, to show that the prisoner wrote about the deceased when she was about to join the church at Great Falls. He also gave notice that on the argument he should use it to show that the name of the deceased is spelt in that letter the same way as in other letters found in her trunk, and that there is a peculiarity of spelling words wrong in the same

way, in the several letters, thus affording internal evidence that they must all have been written by the same person. Mr. Randolph objected to such a use of the letters, on the ground that it was new evidence to a new point of which the defendant had not before had notice. Attorney General. It was impossible for the government to introduce this letter in the opening, for any purpose. The counsel for the defence have gone into the life of the deceased to show her feelings towards the prisoner, and have thus opened the way for the introduction of this letter, (showing his feelings towards her) which otherwise the government could not have produced. We are entitled now to its admission, and when admitted, I claim the right to use it for what purpose I please. After discussion, the court overruled the objection, and admitted the letter. We give it *verbatim et literatim*.

LOWELL, 6th June, 1831.

Dear Brother,

It may appear strange to you that I should address a line to you at this time, but it is from a sense of duty that I do it. Maria S. Cornell called on me on Saturday, saying she had come to Lowell on purpose to make an acknowledgment of her fault, &c. &c. &c.—and after some time I gave her a writing, saying that if you saw *fit* to receive her on trial I should not object, &c. Br. Wilson signed the same, and we were in hopes of having evidence of her penitence, but alas! alas! alas!!! this morning direct information was brought me that she had told a *known wilful falsehood*—her standing being as it is, I have not taken any pains to inquire into the case, but thought prudent to direct this to you as your name is on the strips of paper she has—we should all of us here be opposed to her joining any where; with this you will act your judgment.

Yours in the bonds of a peaceful Gospel,

(Signed)

E. K. AVERY.

Rev. G. Storrs.

[The Attorney General then proposed to give to the jury the letter on yellow paper, post marked at Warren, and which had formerly been ruled out. He did not intend, he said, to make use of its contents, but having proved by the Postmaster at Warren, the genuineness of the post-mark, he offered it as a part of the conspiracy which it had been insinuated the deceased had been engaged in against Mr. Avery, to show the immense difficulties she must have had in carrying it on. Another discussion ensued, upon which the Court said the letter could not be admitted without proof that it had been written by the prisoner.

Isaac Fisk.—I am a teacher of penmanship, and have devoted a considerable time to writing.

Cross-examined.—It have twice been employed in detecting assimilating papers, once in Hillsborough, N. C., and once in Columbia, Ten. In both instances the parties had counterfeited each others hand writings in an amicable contest and submitted them to me for detection.

Direct resumed.—I have devoted three years exclusively to teaching penmanship, and for 14 years have been engaged more or less in the business. I think I am competent to Judge between a natural and a feigned hand.

The Counsel for the Prisoner objected to the witness being called on to do this inasmuch as he had not shown himself sufficiently skilled to be examined as an expert. Recess till 3 P. M.

At the opening of the Court Mr. Randolph removed his objection to the witness as an Expert. The Court overruled the objection and allowed the witness to be examined, observing however, to the jury that they were to judge of his qualifications, and of the weight to which his opinion was entitled.

Isaac Fisk.—Called again, [The Attorney General gives witness the pink letter delivered to the engineer Orswell, and the white letter of the 8th of December.] The pink letter from particular marks, I should judge to be written in a feigned hand; the other one appears to be in a more natural hand.

[The Attorney General offered to show by the witness that in his opinion the yellow letter was written by the same person who wrote the other two letters. Objected to by Prisoner's counsel, as being proof merely by comparison of hands, and therefore not admissible. The question was argued at great length by the the Attorney General and Mr. Pearce for the Government, and by Mr. Randolph and Mr. Mason for the Defence. (Authorities cited, 2 Starkie 657n 4 Espin Rep. 117. 1 Penn. Rep. 160 Banks vs Jacobs, et al, part read p 180.) The court sustained the objection, and ruled out the testimony.

Cross examined again.—I judge the white letter (of December 8th) to be in a natural hand written fast. I infer an attempt to disguise the hand in the other because the lower lines fall off from the horizontal direction of the top lines, and because some parts of the letter discovers more ease and rapidity than others.

142. James Sherman.—I know Luther Chase. He told me days after Mr. Avery was arrested that he was impressed on the opinion that he walked with him from the meeting at Annawan block to the four corners on the 20th of Oct'r her, but was not certain enough to swear to it; that he could not remember any conversation he had with Avery; and that it was all past 9 when they parted. He said nothing about Mr. Avery joining him, or where he overtook him. Langworthy Almy was present during part of the conversation.

Cross examined.—Mr. Chase said he was not sure he walked with Mr. Avery that night; it was his impression that he did, but he was not confident enough to testify to it.

The Attorney General said the evidence for the Government was now closed, excepting the further testimony of Sarah Brownell and Beisy E. Hulls, against whom attachments were issued, and whom he would reserve the privilege of examining on their arrival in court.

WITNESSES FOR THE PRISONER.

143. Cyrus Whipple.—I assist in surveying; Saturday last I measured the distance from Pardon Jison's to the wharf where the Fall River steam-boat lies in Providence, and found it to be 178 rods across the bridge. From Pardon Jison's to the Methodist meeting house is 56 rods; from Pardon Jison's to Fall River steam-boat across the ferry 264 rods; from the Methodist meeting house to said wharf by way of bridge 168 rods, and the same distance by way of the ferry; from Mr. Horton's to the meeting house is 38 rods, and from Fuller's to the same place 29 rods; it is 29 rods from the bridge to the steam-boat wharf; we allowed 50 rods for the width of the river, I measured all the distances except across the ferry.

144. Ezekiel Luther.—[This witness has been a weaver 50 odd years and always made his own harness. He described the knot used on making a harness as a clove hitch—the same as used by sailors; but never knew any thing about the harness used in factories.]

145. John F. Page.—I conversed with John Orswell first time he came to Providence, after the death of Miss Cornell. After he had told me how she was found, and that he thought he had once carried a letter to her, he said in reference to the supposed murder "d—him, I think I know him, I think I do." He then told me that a person come on board the boat with a blue cloak and a broad brimmed hat, and gave him a letter for the girl which he delivered, and he thought he should know the man if he saw him again. He described him as being a tall man, without whiskers, but with a bluish beard growing out of each side of his chin; with rather a long face, sunken blue eyes in large deep sockets. He said it was reported that the murderer was a Methodist minister at Bristol. I described a man that was on board the boat when I was there on the 24th of December, and his description of the man who gave him the letter corresponded with the description of the man I gave him—except that I recollected the man had a velvet collar to his cloak. I thought it might be the same man who gave Orswell the letter; the man I described I have ascertained since this trial commenced was Mr. Arnold; I heard Orswell say he thought Mr. Avery was guilty.

Cross-examined.—The person I described was Mr. Arnold, he has told me so himself, and I recognized him on our passage to Newport. Orswell described the man who gave him the letter, as being a tall man, and as having a black beard growing out on his chin, and large eye sockets, and blue eyes. I live in Providence now, but am a native of Liverpool; the description Orswell gave, answers very well for Mr. Avery. Orswell recollected the man (whom I described to him) being on board the boat. I concluded from his description of the man who gave him the letter, that he was the same person, and told Orswell that I should know him if I should see him again.

TWENTY-THIRD DAY.

Thursday, May 30.

William Simmons, (recalled) Samuel Thompson, Wm. Dimon, Samuel Thompson Jr., Benjamin Foster, Allan Wardell.—[These witnesses testified to a large concourse of people—stating their numbers variously from 50 to 150—collected around, and in the lane near Mr. Avery's house on Christmas day; and to the apprehensions of his family and friends for his personal safety. Most of them concurred too, instating that Mr. Bullock immediately on coming to the scene of the supposed danger, went to the corner of the street near Mr. Eastabrooks, and remained there till the crowd dispersed at the ringing of the steam-boat bell, when he went through the north lane. He was not seen with Col. Harnden by any of them. The witness Foster stated the crowd to consist of from 100 to 150, among whom he saw 8 or 10 "select men." These on his cross examination he defined to be persons dressed in long coats and tight pantaloons and having the appearance of gentlemen. The rest of the crowd he said had round jackets on, except

about a dozen who had no jackets at all.

151. **John G. Harding.**—James R. Sandford's character for truth and veracity is bad.

152. **Jonathan Browning.**—[Witness withdrawn, his evidence being objected to.]

William Lawless (recalled for additional cross-examination.)—I lately had a conversation with Peter G. Gladding about his seeing Mr. Avery on the morning of the 21st of December, as he was returning to Bristol. I did not tell him Avery had a pea jacket. I might have told him he had on a box-coat, which he had.

By Mr. Randolph. I described the coat as one I had seen Mr. Avery have on before—one that he rarely wore except in rain. I did not call it a pea-jacket.

Peter Gladding recalled.—I lately conversed with Mr. Lawless about Mr. Avery's dress on the 21st of December. He said Avery had on a bottle-green pea-jacket with a stand-up collar.

Cross-examined.—I am sure he said "pea jacket," and that he thought he had seen him have on the same garment before. This conversation was since the trial began.

153. **Mary Freeborn.**—I saw Mr. Avery on the morning of the 21st of December, as he was turning the corner near our house in Bristol. He had on a box coat, buttoned close, and held a pocket handkerchief in his hand. This was soon after sunrise.

Cross-examined.—He was about two rods off, with his face towards me. I remember the day because my grandmother died that morning.

154. **Fanny Cook.**—On the 20th of December, I was at Daniel and Robert Wilcox's. Just as we had finished tea, a little past 3 in the afternoon, I turned from the table and looked out of the window, and saw Robert Wilcox coming home from clammimg. He had a basket or pail of clams, which he carried with a stick or hoe, on his shoulder, and a gun under his arm. I know it was a gun, for when he got over the fence near the house, he leaned it against the fence and I saw it distinctly.

Cross-examined.—I first told this at the time of the Bristol examination; it runs in my mind that my son said that Mr. Avery had said he saw a man with a gun, in the account he gave of his route on the island, and this brought it to my recollection.

155. **George P. Piérce.**—I live in Bristol. I overheard part of a conversation between Mr. Lawless and Mr. Gladding, concerning Mr. Avery's outside dress when he returned to Bristol on the morning of the 21st of December. I heard Lawless say it was a green pea jacket, with a stand-up collar.

Cross-examined.—I heard Gladding contradict Lawless, and say Mr. Avery had on an outside "garment" or "coat," he can't be positive which; I can give no reason why I recollect more distinctly what one said than the other.

Stephen Bartlett recalled.—I have no recollection of Mr. Avery's going to Fall River with me previous to the 19th of October. On the 20th October, he and Mr. Bidwell came together to the stables at Bristol; they were to exchange the next day, (Sunday) and Mr. Avery wanted to engage a horse to ride over to Fall River the next morning; but Mr. Bidwell said as the people there had been once disappointed when they expecting to hear him, he feared, unless he was there early in the morning, the congregation would be thin; and finally prevailed on him to go over that evening in the steamboat.

156. **John S. Brownell.**—I live in Portsmouth. Jane Gifford's character for truth and veracity is bad. [The witness, on his cross examination, could not be made to comprehend the distinction between his private estimate of Miss Gifford's moral worth, and her general character as indicated by the speech of people; and became so petrified by the Attorney General's questions that the united voices of the court and counsel on both sides, aided by the stentorian efforts of the sheriff could scarcely make him quit the stand.]

Luther Chase recalled.—I stated to Mr. James Sherman that I saw and conversed with Mr. Avery on the 20th of October; I told him that I saw Avery about 9 o'clock; that he overtook me near the four corners and mentioned the conversation I had with him. I told him that "I should not like to swear to it, but I am just as sure as I am here." My unwillingness to swear was not because I had doubts that I had seen Mr. Avery, but because I wanted to keep clear of the whole matter.

Cross examined.—I do not recollect expressing to Mr. Burden, any doubts of my having seen Mr. Avery. I might have said and, probably did say, that I did not want to testify.

Mr. Randolph here stated that the evidence for the Defence was closed. Recess till three o'clock.

The Attorney General called the following witnesses on behalf of the Government

Fanny Cook.—Recalled for further cross examination. I ever told Albert G. Cook or John Barrington or any other person that I did not see Robert Wilcox have a gun. Cook asked me about it, and I said I would not tell him any thing. I've told you the truth and n't thing but the truth.

157. **Albert G. Cook.**—Yesterday morning at John Barrington's, I heard Mrs. Fanny Cook say she did not see Robt. Wilcox have a gun, and that she knew nothing about it, only that she had asked his boy where he was, and that he told her he had one a gunning.

Cross-examined.—The conversation commenced by my telling her some said she had seen a gun, and some that she had not, and I wanted to know how it was. [The witness on a cross-examination as to his motive in seeking this conversation, showed a disposition to try conclusions with Mr. Mason, and shortly found himself done up in such style as to render it doubtful whether he will ever again dare to give a positive answer to any question.]

158. **John Barrington.**—[The witness heard the conversation related by the last witness, and corroborated his statement throughout.]

By Mr. Mason.—Please to repeat again what you heard Cook say to the old lady, and her reply.

Witness.—Very, I said that he said that some said she had said that she had saw a gun, and some said that she did not; and she told him she saw no gun, &c.

Robert Wilcox (recalled.)—I had no gun with me on the 20th of December.

Andrew Brownell, recalled.—I saw Robert Wilcox in the afternoon of the 20th of December, in Feather Bird Lane (so called either from the great number of stones or of geese in it.) He had either a hoe or a stack of wood with a pail of clams hanging on it over his shoulders, but no gun.

Mary Wilcox is the wife of Mr. Daniel Wilcox. Robert Wilcox lives in the same house with us. On the afternoon of the 20th of December I saw him on returning from the shore where he had been for clams. He had no gun. Sarah Brownell was there and asked who that was in Capt. George Brownell's lot; I told her it was Robert Wilcox, and said, "I thought you would have known him."

Cross-examined.—He was going towards the gate. This was about 3 o'clock as near as I can judge.

Elizabeth Brownell.—[Witness saw Robert Wilcox about the same time going towards home with a pail on his shoulders but with no gun.]

Fanny Cook.—Recalled for further cross-examination. I don't recollect telling Albert G. Cook whether I had seen Robert Wilcox with a gun or not; I know I did not swear to, and I've told here the truth and nothing but the truth. [The witness afterwards admitted she had told Cook that she saw no gun, and said that she did it to put him off, knowing he would make a handle of it.]

We omitted in the proper place, namely, at the close of the testimony for the prosecution on Wednesday, May 29th, to mention that the Hon. D. J. Rice read in evidence, extracts from the following works which had been given by the Physicians previously examined, as medical authorities to be ruled on, viz. I. *Burns Midwifery*, p. 149. *Beauveloigne*, p. 35. *Denman*, pp. 165, and 123, Sec. 3. *XIII Rees Cyclopaedia, Article Embryo*, *Hamilton's Outline of the Theory and Practice of Midwifery*, p. 66. *Edinburgh system of Anatomy*, p. 11. *H. Beck's Medical Jurisprudence*, pp. 106, 1, 2, containing extracts from *Beclard, &c. Ricketts's Elements*, &c.

The Attorney General also read to the jury extracts from legal works, as follows:—I. *Starkie*, 478, 479, 482, 3, 4: 491, 2, 5; 504; 514; 304: *Chitty's Crim Law*, 363: *Phil. Ev.* 230.

On behalf of the Defence, extracts from legal works were read as follows:—I. *Starkie* 478, 493, 506 and note, 508, 510, 511, 513, 596. II. *Starkie* 364, 367. II. *McNally* 579. Essay on Presumptive proof (an appendix to Philp's Evidence) p. 15, 22, 24, 27, 37.

The Medical Authorities read to the jury on the same behalf by Mr. Randolph were as follows: II. *Beck's Medical Jurisprudence*, pp. 10, 14, 24, 36, 43; *Ryer*, p. 172; and III. *Meckel*, p. 436; upon which, in connection with the medical evidence previously given, he commented, for the purpose of establishing the following positions; namely, that the deceased died of strangulation by hanging, and not by horizontal constriction of the cord; that the mode of her death in reference to the author of it was suicide, and not homicide; that the fetus which she bore must have been conceived prior to the Thompson Camp Meeting, and consequently that its paternity could not by the evidence be charged to the prisoner.

HON. JEREMIAH MASON.

May it please the Court, Gentlemen of the Jury:—

I cordially unite with the associate counsel who yesterday

preceded me, in congratulating you and all who have been engaged in this extraordinary trial that there is at length some prospect of its being brought to a close. A trial more extraordinary we shall not find recorded in the annals of this country ever if we go back to its history from its earliest settlement, nor perhaps in those of any other. During three long weeks of daily labour and arduous attention, it has demanded and received the utmost exertion of our mental and physical powers, and there are few of us who do not manifest the fatigue and exhaustion which we have suffered. Yet the heaviest and most arduous part of your duty, gentlemen, still remains to be performed. How are you to dispose of the mass of testimony which has accumulated before you? How are you ever to remember a comparatively small part of the evidence which you have heard? I need not tell you that the human memory is unequal to the task,—yet the very theory of trial by Jury is founded upon a supposed power of accurate recollection and comparison of conflicting evidence; and when the court refused you paper to take notes as a means of aiding the memory of a Jury not usually allowed, they doubtless did so from a scrupulosity to infringe upon this principle. It is by your own unaided memories that you must be guided to your ultimate decision, and you must not depend upon the recapitulations of counsel on either lest you should be misled. Your three week's memory, is required to disentangle the thread of truth on which the destiny of my client depends, from among the endless varieties, difficulties, discrepancies, and obscurities in which it is involved.

It is not the least remarkable peculiarity of this trial, nor one which will lessen the labour and responsibility of your duty, that it has been attended by an unparalleled public excitement. In the course of a tolerably long experience in courts of Justice, I have never seen nor read of an excitement of public feeling so calculated to prejudice the rights of an individual, or the state administration of the public laws. Most unfortunately for the defendant in this cause this excitement has generally flowed in a tide of unexampled prejudice against him, and he has been all of this crime. But what has been the testimony to establish this point? Not that of any person who swears he saw the mortal blow inflicted, but a mere web of trivial, and in themselves, unconnected circumstances, woven by the skill of the prosecution into a texture of injurious probability, which you would not deem sufficient even in a civil action to justify your demanding damages from a defendant. The crime which this testimony has been brought to prove stands at the head of all human offences; for though treason and arson may do more mischief to society, none inflicts so deep a wound upon its feelings. From the infrequency of murder as compared to that of suicide, much stronger proof is required to render its perpetration probable,—and nearly in the same proportion as suicide is less probable than a natural death. In New England there are three suicides to one murder, and in all other countries the occurrence of the latter is so much less frequent than that of the former, as to establish the actual improbability of murder in any case of violent death where the supposition of suicide is not precluded by the peculiar circumstances of the case. In this case, however, all attending circumstances strengthen rather than oppose the natural probability of suicide, whether we derive them from the state of mind and character of the deceased, or from the evidence adduced to implicate the prisoner as her murderer. That a girl whose character was so utterly repulsive that she could not long retain a cover for her infamy in any one of the numerous places through which she wandered, should at length have rid herself of an existence which she no longer valued, would be but one probable addition to the numerous, though melancholy examples of suicide which have occurred under similar circumstances; but that the defendant, a man of high religious reputation and unsullied character, should have selected a spot in the vicinity of a populous village, intersected with public path-ways, for the commission of a murder, is at once against all external probability. And what is the internal evidence of this case to preponderate or even to balance this external objection? John Dufree, the first witness called for the prosecution deposed that he cut the cord which was around the neck of the deceased, about half an inch from the stake, from which she hung, and that there was something more than five inches of cord after it had been thus cut hanging from her neck. But all the other witnesses who have deposed to this point, have sworn directly the reverse, and that four, five, or six inches of cord were hanging from the stake and but about half an inch from her neck! If the witnesses leave such things as these uncertain how are we to rely on their statements respecting the various other minute but important particulars of her situation when found? Then comes the description of the appearances on her body, as given by the women who prepared her for interment: these however were so slight as not to have created any idea of murder in their minds until it was subsequently suggested to them by a totally different cause. They ob-

have enwrapped the minds of the witnesses. Many who at first would only say "it is my impression I saw him here," or "I am inclined to think I saw a man resembling him there," converses with his neighbors, has his weak impressions confirmed from their lips, and hears them corroborated from sources which, though they have primarily sprung from himself come to his ear with all the force of new and original authorities; and these impressions which were mere evanescent conjectures, light as the veriest gossamer, are brought out with the strength and confidence of established convictions. Let the social fever rage, and the impressions grow with the feelings which they have excited, and then let a man of the greatest virtue attempt to analyse those convictions which he has derived from the evidence of his senses, from among those which he has acquired from conversation with his neighbors; and he will, if he can trace the distinction at all, become astonished at the influence under which he has unconsciously passed. To this cause we may attribute the serious discrepancies which have appeared in the testimony produced on this trial. [The learned counsel then expatiated on the various causes of public excitement already mentioned in the previous speeches.]

The first point which it is incumbent upon the government to prove in this case is, that the deceased came to her death by homicide and not by suicide; for if this is not proved there is at once an end of the inquiry. You must have the crime proved before you seek the criminal, and if this is not proved beyond any other point in the indictment, the prisoner has nothing to fear. I do not mean to say that a proof of this kind can never be derived from circumstantial evidence, but it must be such a proof as a person of a strong mind will not hesitate to admit as conclusive. In the language of the learned gentleman who opened this cause, the evidence must amount to a "moral certainty," or as Lord Bacon and others express it, must leave the mind "without doubt," or "without reasonable doubt," for as long as any doubts hang on your minds concerning this essential point, you cannot convict the prisoner or any other man of this crime. But what has been the testimony to establish this point? Not that of any person who swears he saw the mortal blow inflicted, but a mere web of trivial, and in themselves, unconnected circumstances, woven by the skill of the prosecution into a texture of injurious probability, which you would not deem sufficient even in a civil action to justify your demanding damages from a defendant. The crime which this testimony has been brought to prove stands at the head of all human offences; for though treason and arson may do more mischief to society, none inflicts so deep a wound upon its feelings. From the infrequency of murder as compared to that of suicide, much stronger proof is required to render its perpetration probable,—and nearly in the same proportion as suicide is less probable than a natural death. In New England there are three suicides to one murder, and in all other countries the occurrence of the latter is so much less frequent than that of the former, as to establish the actual improbability of murder in any case of violent death where the supposition of suicide is not precluded by the peculiar circumstances of the case. In this case, however, all attending circumstances strengthen rather than oppose the natural probability of suicide, whether we derive them from the state of mind and character of the deceased, or from the evidence adduced to implicate the prisoner as her murderer. That a girl whose character was so utterly repulsive that she could not long retain a cover for her infamy in any one of the numerous places through which she wandered, should at length have rid herself of an existence which she no longer valued, would be but one probable addition to the numerous, though melancholy examples of suicide which have occurred under similar circumstances; but that the defendant, a man of high religious reputation and unsullied character, should have selected a spot in the vicinity of a populous village, intersected with public path-ways, for the commission of a murder, is at once against all external probability. And what is the internal evidence of this case to preponderate or even to balance this external objection? John Dufree, the first witness called for the prosecution deposed that he cut the cord which was around the neck of the deceased, about half an inch from the stake, from which she hung, and that there was something more than five inches of cord after it had been thus cut hanging from her neck. But all the other witnesses who have deposed to this point, have sworn directly the reverse, and that four, five, or six inches of cord were hanging from the stake and but about half an inch from her neck! If the witnesses leave such things as these uncertain how are we to rely on their statements respecting the various other minute but important particulars of her situation when found? Then comes the description of the appearances on her body, as given by the women who prepared her for interment: these however were so slight as not to have created any idea of murder in their minds until it was subsequently suggested to them by a totally different cause. They ob-

served a green mark upon her knees as if from the juice of grass, but this would not wash out, and it is therefore uncertain whether it was the stain of grass at all. But if the stain were of this kind, where is the improbability that this strange creature whose religious feelings were not less strong than her other passions, should have exercised them in devotion on the solemn occasion of her leaving this world for another; and thus have marked her knees in the manner they have been described? As to the other appearances of the body as deposed to by the two medical men who examined them, it is sufficient to say, on the authority of all the other medical witnesses who have been examined, that they must be deemed entirely inconclusive on the question of violence and murder, if it were only from the length of time subsequent to her death at which the examination of them was made. Why was not the examination made before if there was any ground for suspicion in the original state of the body? And why were not other and experienced physicians called to assist or at least to witness the examination. The defendant's rights were violated in this omission, and if any doubt or disadvantage has arisen from this it must rest upon the government and not upon my client. But what originated the idea of murder in this case, and what first connected that idea with the unfortunate defendant? A slip of paper was found in the band box of the deceased, on which were the following words written in pencil, "If I am missing, inquire of the Rev. Mr. Avery of Bristol, he will know where I am gone." This mysterious paper at once set the whole neighborhood in a flame. No inquiry was made whether the paper was genuine or not, but the defendant was immediately deemed a murderer. Yet what is the history of the discovery of this paper? One witness testifies that it was taken from the bottom of the band box in which it was said to be found, and others say it was taken from the wearing apparel near the top of it; but if these statements be true it is evident the paper must have been removed after it was first discovered, and why may we not suppose its contents were written by some malicious person to implicate the defendant either in the crime of having an illicit connexion with this girl, or in the greater one of her murder? And why were not some of her numerous female acquaintances who doubtless had often seen her write called to identify if they could the handwriting on this paper. But Mr. Grindall Rawson, her brother-law, was alone called for this purpose, and he had never seen her write but two words! and could not prove that any of the letters which he had received from her were actually written by herself! [The learned counsel then proceeded through the whole testimony which had been given both for the prosecution and for the defence, but at a length so far beyond what was anticipated when the title page of this report was printed, as to preclude the possibility of even condensing his remarks within the limits to which the announced price of this publication necessarily restricts its pages.] The learned counsel then concluded as follows:—I consider the past character of the defendant, and his demeanor on this trial to be circumstances worthy of a place among a strong class of moral evidence which his cause exhibits in his favor; and which if weighed against much of the trifling circumstantial evidence produced against him, must be deemed important. His character as proved before you has been pure, peaceable, blameless, and in every respect worthy of esteem; and that high firmness of mind and strict propriety of demeanor which he has preserved throughout a trial, the labor of which those far differently situated to him and not like him dragged from day to day from a cheerless cell, have scarcely been able to sustain, entitle me to ask you whether it does not require a much higher degree of evidence to convict him of the greatest of human crimes than would be required to convict a man whose character and conduct might corroborate an accusation of this kind? I have not the highest opinion of human nature, for I have been the greater part of life in courts of law, where the fairest characters will sometimes ill sustain the test of scrutiny; but I consider a minister of the Gospel whose life has been devoted to teaching the pure precepts of religion, and whose conduct has been consistent with his profession, to be less likely than other men to incur that degree of guilt with which my client is accused. I believe he is the only minister of religion who has ever been arraigned in the courts of law in this country for a capital offence, and this adds another argument to the moral probability of his innocence. Gentlemen, whatever may be your decision respecting this, I am authorised by my client to render you his hearty thanks for the attention with which you have heard his case. The Court adjourned at 8 P. M.

Saturday, June 1.

ALBERT C. GREENE, Esq., Attorney-General.

May it please the Court,—Gentlemen of the Jury:—

The situation of a public prosecutor is at all times painful to his private feelings; for the faithful performance of its arduous duties must always involve and frequently sacrifice the happiness of some of his fellow men. But I have never felt my public duty more severely than under the peculiar circumstances of the present trial. The prisoner whom I bring before you is a

minister of our holy religion, whose character is said to have stood fair and unblemished, and who is associated with a religious body whose piety, zeal, intelligence, and numbers, are equal to those of any in this country. The naturally jealous interest which is felt throughout that numerous body in the issue of this trial, on the one hand; and the proportionately stern demands of public justice on the other, render the performance of my duty more unpleasant, and yours more difficult than on ordinary occasions. But, Gentlemen, it is our duty to look at this cause as that of the defendant only, and not as that of any religious community. The Government seeks to try this cause as it would any other; the Government wages no war against the Methodists or their Ministers; the government, represented by me, makes no charge against them; we ask and we only ask that this Methodist Minister be tried by same laws as any other man would be, and his conduct passed upon, as yours or mine would be, under similar circumstances.

It has been accurately said that murder is the highest crime known to our laws, and that it is the extremity of human power to inflict upon its perpetrator the punishment which they impose. You have thence been taught to infer that this crime requires a higher degree of proof than would be deemed necessary for the punishment of other crimes, and that circumstantial evidence can rarely supply the degree of proof required. But you need not to be told that this crime, usually perpetrated in cautious secrecy and darkness, is yet more rarely to be proved by evidence of any other kind. And the moral authority for its punishment depends less upon the nature of the proof than upon the degree of conviction which the evidence, of whatsoever kind it may be, establishes in the mind. You would not be authorised to convict an offender of any inferior crime without a full assurance of his guilt, but with this assurance you would be authorised to convict him of the crime of murder; and in proportion as this crime is great so should be your caution that he escape not its punishment. In every case there is an abstract possibility of the innocence of the accused, but justice and truth prohibit our being led away by whimsical theories of possible innocence when no reasonable doubt of a criminal's guilt can remain upon the judgment; and when you arrive at this, you arrive at as great a degree of certainty as the law requires. You have been told, Gentlemen, that you are bound to take the prisoner as innocent until he shall have been proved guilty. We admit it. You have been told we must show that he had both motive and opportunity for the commission of this crime; and we will admit it. You have been told we must prove that he did actually commit this crime; and this too we will admit. But we will not admit that the chain of proof with which we bind these facts upon him must have demonstration and certainty stamped upon each of its links, before it can be considered secure. It is untrue that you are not authorised to take one fact in aid and corroboration of another; nor that the moral force of our aggregate of testimony would be destroyed by holding up single facts and saying "this is not fully proved, and that remains uncertain;" for it is with circumstantial evidence as with a cable of an hundred strands—take separate strands and you may be reasonably unwilling to allow them an important trust; but take all the strands in union and you bid your bark stem the torrent and the gale. Evidence which is self-corroborative by its circumstantial consistency in all important particulars, contributes a higher degree of certainty than any personal or positive evidence can do which has not this kind of confirmation; and even trifling discrepancies in the testimony which affords this evidence, will tend rather to its general probability, by removing the suspicion of design, than to its incredibility as examples of untruth or of error.

Before I come to the two great questions of suicide and murder into which the cause seems divided, I cannot forbear remarking on that large portion of the testimony and argument for the defence which has been directed against the character of the unfortunate deceased. The efforts made for this purpose are I believe unexampled in the records of any capital trial. For the last ten years of her life every lewd or improper act which she either did or confessed to have done; and every passionate, remorseful or indiscreet expression which she uttered, have been collected, collated and brought forward for the purpose of endowing her with motives for suicide and revenge. But the industry with which this purpose has been pursued, has, perhaps, overwrought its intended object, for if her character be such as has been described the motives to suicide and revenge must be sought for in vain.

It has been said that her character for the last ten years had been so invariably bad, that not more than three months could be selected as a green spot in her existence; but the counsel for the defence had forgot that during the two years which preceded the Thompson Camp Meeting, there had been nothing in her conduct which even the vigilance of detraction could detect as improper; and that she had sustained a good character at Lowell before she became acquainted with the prisoner in 1830. That she was sincerely penitent and pious at times is as little to be doubted as that she was at other times misled by sexual passion—crime and confession, piety and remorse, a long

passion and bitter penitence appear to have journeyed with her hand in hand. Her conduct, however, from the time of her expulsion from the church at Lowell, is attributed to revenge towards the prisoner; but for what reason it is difficult to suppose. It was not Mr. Avery who volunteered to bring the charges against her in his own church, nor did he bring any charges against her at all except in obedience to a committee of the members. He then advised her to be absent from the scene of her accusation, and the face of her accusers, but for what reason I shall not now inquire. Yet in no instance either at the Thompson Camp Meeting, or on any other occasion did his conduct as a minister towards her authorise a vindictive feeling in her bosom; and it is impossible to suppose that any feeling of this kind which she may have expressed towards him could have been excited by this cause. In attributing motives of suicide to the deceased, the counsel for the defence have thought proper to avoid an examination of that period of her life which might reasonably be supposed to have furnished them much more strongly and abundantly than any other. Yet what was there in her circumstances or conduct immediately before her death, which would justify any idea of her being urged to this crime? Is her pregnancy or the fear of its discovery to be considered an influencing cause? Had indeed her life been one of undeviating virtue, this might have been thought probable; but if the evidence produced against her character be true, she must have before repeatedly braved the shame of this disgrace, which must therefore have lost its horrors; and her refusal to take the oil of tansy at the risk of her life, and her assurance to Dr. Wilbur that she would rather give birth to her child "and do the best she could with it," than thus attempt to destroy it, show no indifference to her existence, nor motive to suicide from this cause. And she could not have been influenced by any fear of discovery, for her situation was known to Wilbur and to her brother and sister in Connecticut. Her state of mind and prospective arrangements immediately before her death, give no confirmation to the supposition of suicide. She was quite cheerful at the prospect of fulfilling her appointment on the evening of her death, and though she left the paper in her hand box to provide against the publicity which would be given to her situation were her absence unaccounted for, she had evidently no other apprehension than that of being removed by the prisoner for secrecy during her pregnancy. This paper however has been represented as a part of the plan of revenge against the prisoner, which the deceased is said to have even killed her to complete. But if so why were the other letters which implicate him only in connexion with circumstances left to depend for their force upon events which no fabricator could either have foreseen or controlled? Why was there not some clue to Mr. Avery in these? why were not the initials of his name within them? why were they not mailed at Bristol, the place of his residence, if they were designed to appear as letters written by him? It is equally difficult to suppose that the letter of the 8th of December, making the appointment for the fatal evening of the 20th, could have been fabricated for this purpose; for how could the fabricator know that the prisoner would be on the Island that evening, or that he could not account for every moment of his time? But at whatever place these letters were mailed, there is the prisoner proved to have been on the very days of the post marks which they bear. The Attorney General then argued the evidence derived from the personal appearances and incidental circumstances of the deceased after death; and observed that the testimony of the women who examined the body immediately after death, was to be as much respected as that of a whole college of physicians who might be brought to rebut it by theories. The green stain of grass on the knees he added was not likely to have been made whilst the deceased was in any act of devotion, for it was not probable she would have knelt upon the frosty ground with her knees bare; but upon the supposition that the prisoner had placed her in an attitude to facilitate his attempts at abortion, the stain was easily accounted for. He also showed from the evidence which described the knot, the indentation around the neck, the situation of the hands, clothes, &c. of the deceased, that suicide under these circumstances, was physical impossibility.

He then alluded to the absurdity of the supposition that the screams and moans which were heard by two persons on the evening of her death, in the vicinity of the spot on which she was found dead, could have proceeded from a person who was roaming about a field on an inclement evening, inflicting wounds and bruises upon herself. He next proceeded to the evidence, both internal and exterior, which proved the prisoner to be the author of the letters which were found in the possession of the deceased, and thence to that which more immediately connected him with the scene of the crime. The medical testimony was next noticed, and the attempts to prove that the deceased was pregnant at the time of the Thompson Camp meeting. The statement of the Rev. Mr. Mayo that her walk and size excited his suspicions that this was her situation at that time, was severely remarked on, because the utmost

which medical men attempted to prove was, that she was then but a month or six weeks advanced, and that her pregnancy could not, therefore, have been perceived or suspected by that witness from external appearances. And after the learned and highly talented counsel had gone through the great mass of testimony, with a power of intellect and of language, which for eight hours, had bound a dense audience in silent astonishment and solemn conviction, he thus concluded:

New gentlemen, if the prisoner was not the perpetrator of his crime on whom can the slightest suspicion fall, on whom after this can suspicion rest for any earthly crime? I have proved beyond all reasonable doubt that he alone was the author of this deed, and I now demand of him, as it is my duty to do, to account, if he can, for the death of this citizen upon the principal of his innocence. He was the last being seen in her company, and this was on the evening and near the place of her death; I demand of him to account for her. What occurred between them there, and what was the progress of her sufferings can now be known to him only by whom nothing is unknown. The prisoner, if we may extend our charity so far as to suppose it, might not have met her there with murder in his heart, but might have been suddenly induced to take her life by the dreadful state in which his cruel attempts at producing abortion by violence may have left her; and to this he was doubtless impelled by the strongest motives which could influence a guilty mind trembling under the fear of detection, infamy and ruin; yet I still call to him to account for her death upon the theory of his innocence. But how does he account for himself during the evening of this unfortunate woman's murder?

He had been invited to spend that evening at the house of a religious neighbour, a member of his church; but he declined the invitation without assigning a reason for so doing, and proceeded on the favourable occasion, of a boisterous December evening, to take a vague excursion in pursuit of objects of natural history. From an early hour in the afternoon to half past nine at night, he meets no one but a boy who was near a flock of sheep, and a man who was carrying a gun; to these he spoke, but they are no where to be found; they have vanished from the earth, and cannot confirm his story. He was afflicted with lameness, yet during these many hours laborious and painful research he visited the house of no friend, though surrounded by many of his acquaintances; nor did he, insensible as he was to hunger and thirst, take any refreshment. At the late hour of half past nine, however, this humane man and affectionate father, became anxious to return to his sick wife and family. Now gentlemen, believe this story if you can; but if you cannot, you must come to the conclusion that this unhappy man, once upheld by his conscious probity, and a stranger to guilt, has fallen to the depth of human crime; and now stands before the violated laws of his country, the just object of their highest punishment. Gentlemen, I have endeavoured faithfully to discharge my duty to this state; and it now only remains that you perform yours, to your country, to your consciences, and above all to your God.

The Attorney-General concluded at 8 o'clock P. M. and the Chief Justice very briefly charged the jury upon the law of the case, omitting any remarks upon the testimony, which he said he felt it to be his duty to leave entirely to the uninfluenced opinion of the jury. His Honor concluded at five minutes past eight, and the Jury returned.

Sunday, June 2.

At a little before 12 o'clock at noon this day, the Court bell announced that the jury had agreed upon their verdict, and an immense crowd immediately assembled round the Court-house. On the opening of its doors, every part of it was instantly filled, and it was not without the greatest difficulty that a passage could be made for the Jury and Counsel.

The Court was detained some minutes by the absence of Mr. Randolph; and, during this period of painful suspense, of silence as the tomb pervaded the whole assembly.

The prisoner, during this interval, made great efforts to resume his usual composure of manner; but his hand, when he placed it on his forehead, trembled excessively, and his lips exhibited the same kind of convulsive motion which they had shown on several occasions during the progress of the testimony for the prosecution, and of the Attorney General's Address.

Mr. Randolph having arrived, the prisoner was directed to look upon the Jury, and the question being put "How say you? do you find the prisoner guilty or not guilty?" the foreman replied "NOT GUILTY."

Ephraim K. Avery rose and bowed to the jury, resumed his seat, raised his spectacles and wept. But, in a few minutes, his face which had been suddenly and violently suffused, returned to its cold white hue, and he received the congratulations of his counsel and of several clerical friends, with his usual collectedness of manner. In the course of the afternoon he sailed with a fair wind for Bristol in a schooner which had been prepared for him.

